

01-11-440336

COURT FILE NO.



**ONTARIO
SUPERIOR COURT OF JUSTICE**

**KHALID ABA-ALKHAIL
MANAL ALSAIGH,
WALEED ALGHAITHY**

PLAINTIFFS

-AND-

**UNIVERSITY OF OTTAWA
JACQUES BRADWEJN
PAUL BRAGG
JAMES WORTHINGTON
JOHN SINCLAIR
RICHARD MOULTON
FRASER RUBENS
EVE TSAI
ERIC POULIN
THIERRY MESANA and
LLOYD DUCHESNE**

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date November 24, 2011 Issued by


T. Augusto
Registrar

Local registrar

Address of court office :

Toronto Courthouse
393 University Ave. -10th Fl.
Toronto, ON
M5G 1E6

TO:

University of Ottawa

Legal Services-Tabaret Hall
550 Cumberland Street, Room C302,
Ottawa, ON, K1N 6N5

Jacques Bradwejn

Faculty of Medicine- Dean's Office
451 Smyth Road
Ottawa, ON, K1H 8M5

Dr. Paul Bragg

Faculty of Medicine- Associate Dean
Postgraduate Medical Education
Office
451 Smyth Road, Ottawa, ON,
K1H 8M5

Dr. James Worthington

Senior Vice-President, Medical
Affairs, Quality and Patient Safety
The Ottawa Hospital - Civic Campus
Room M017, Civic
1053 Carling Avenue, Ottawa, ON,
K1Y 4E9

Dr. Eric C. Poulin

Surgeon-in-Chief
The Ottawa Hospital – General
Campus
501 Smyth Road
Ottawa, ON, K1H 8L6

Dr. Thierry Mesana

Chief, Cardiac Surgery, University of
Ottawa Heart Institute
Professor and Chair, Cardiac Surgery,
University of Ottawa
Division of Cardiac Surgery,
University of Ottawa Heart Institute
40 Ruskin Street, Ottawa, ON K1Y
4W7

Dr. Fraser Rubens

Cardiac Surgery Program Director
Division of Cardiac Surgery,
University of Ottawa Heart Institute
40 Ruskin Street, Ottawa, ON K1Y
4W7

Dr. Richard Moulton

Chief, Division of Neurosurgery
The Ottawa Hospital - Civic Campus
1053 Carling Avenue, C2-2202
Ottawa, ON K1Y 4E9

Dr. John Sinclair

Division of Neurosurgery
The Ottawa Hospital – Civic Campus
1053 Carling Avenue
Ottawa, Ontario K1Y 4E9

Dr. Lloyd Duchesne

University of Ottawa Heart Institute
40 Ruskin Street, Ottawa, ON,
CANADA, K1Y 4W7

Dr. Eve Tsai

Division of Neurosurgery
The Ottawa Hospital, Civic – Campus
1053 Carling Avenue, Ottawa, ON,
K1Y 4E9

CLAIM

1. The plaintiff Waleed AlGhaithy claims:

- (a) damages against the University of Ottawa for wrongful dismissal in the amount of \$25,000,000.00;
- (b) a declaration that the University of Ottawa violated the plaintiff's rights to freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms* and that such violation was not justified under s. 1 thereof;
- (c) damages against the University of Ottawa for breach of the plaintiff's rights to freedom of expression pursuant to s. 2(b) of the *Canadian Charter of Rights and Freedoms* in the amount of \$5,000,000.00;
- (d) damages against the University of Ottawa, Jacques Bradwejn, Eric Poulin, Paul Bragg, Richard Moulton, Eve Tsai, John Sinclair and James Worthington for conspiracy to injure in the amount of \$5,000,000.00;
- (e) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Richard Moulton, John Sinclair for misfeasance in public office in the amount of \$5,000,000.00;
- (f) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Richard Moulton and John Sinclair for breach of fiduciary duty in the amount of \$5,000,000.00;
- (g) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Richard Moulton and John Sinclair for negligence in the amount of \$5,000,000.00;
- (h) damages against the University of Ottawa and Richard Moulton for defamation in the amount of \$400,000.00;

- (i) damages against the University of Ottawa and John Sinclair for defamation in the amount of \$400,000.00
- (j) aggravated and punitive damages in the amount of \$ 5,000,000.00;
- (k) costs of this action on a substantial indemnity basis;
- (l) pre and post judgment interest on all amounts in accordance with the *Courts of Justice Act*; and
- (m) such further and other relief as this Honourable Court may deem just.

2. The plaintiff Khalid Aba-Alkhail claims:

- (a) damages against the University of Ottawa, Jacques Bradwejn, Thierry Mesana, Paul Bragg, Fraser Rubens, and James Worthington for intimidation in the amount of \$5,000,000.00;
- (b) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Thierry Mesana and Fraser Rubens for misfeasance in public office in the amount of \$5,000,000.00;
- (c) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Thierry Mesana and Fraser Rubens for breach of fiduciary duty in the amount of \$5,000,0000.00;
- (d) damages against the University of Ottawa, Paul Bragg and Fraser Rubens for conspiracy to injure in the amount of \$5,000,000.00;
- (e) damages against the University of Ottawa, Jacques Bradwejn, Paul Bragg, Thierry Mesana and Fraser Rubens for negligence and breach of contract in the amount of \$5,000,000.00;
- (f) damages against the defendant Lloyd Duchesne for defamation for \$400,000.00;
- (g) aggravated and punitive damages in the amount of \$5,000,000.00;

- (h) costs of this action on a substantial indemnity basis;
 - (i) pre and post judgment interest pursuant to the provisions of section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (j) such further and other relief as this Honourable Court may deem just.
3. The plaintiff Manal Alsaigh claims:
- (a) damages against the University of Ottawa, Paul Bragg and Fraser Rubens for conspiracy to injure in the amount of \$5,000,000.00;
 - (b) damages against the University of Ottawa, Thierry Mesana, Paul Bragg and Fraser Rubens for misfeasance in public office in the amount of \$5,000,000.00;
 - (c) damages against the University of Ottawa, Thierry Mesana, Paul Bragg and Fraser Rubens for breach of fiduciary duty in the amount of \$5,000,000.00;
 - (d) damages against the University of Ottawa, Thierry Mesana, Paul Bragg and Fraser Rubens for negligence and breach of contract in the amount of \$5,000,000.00;
 - (e) damages against the University of Ottawa and Fraser Rubens for defamation in the amount of \$ 400,000.00;
 - (f) aggravated and punitive damages in the amount of \$ 5,000,000.00;
 - (g) costs of this action on a substantial indemnity basis;
 - (h) pre and post judgment interest pursuant to the provisions of section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (i) such further and other relief as this Honourable Court may deem just.
4. The plaintiffs and each of them claim:
- (a) damages against the University of Ottawa in vicarious liability for the conduct and torts committed by the individual defendants, namely, intimidation, defamation,

- breach of fiduciary duty, misfeasance in public office, conspiracy to injure and negligence and breach of contract in the amount of \$15,000,000.00;
- (b) damages against the University of Ottawa for breach of contract and negligence in the amount of \$15,000,000.00;
 - (c) a declaration that the University of Ottawa violated the plaintiffs' rights under s. 15 of the *Canadian Charter of Rights and Freedoms* and that such violation was not justified under s. 1 thereof;
 - (d) damages against the University of Ottawa for breach of the plaintiffs' rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$5,000,000.00;
 - (e) aggravated and punitive damages in the amount of \$ 10,000,000.00;
 - (f) pre and post judgment interest pursuant to the provisions of section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
 - (g) their costs on a substantial indemnity basis;
 - (h) Such further and other relief as this Honourable Court may deem just.

The Parties

- 5. The plaintiff Khalid Aba-Alkhail ("Aba-Alkhail") is a medical resident in the Cardiac Surgery Program of the Faculty of Medicine at the University of Ottawa. He is a citizen of Saudi Arabia and resides in the City of Ottawa.
- 6. The plaintiff Manal Alsaigh ("Alsaigh") is a medical resident in the Cardiac Surgery Program of the Faculty of Medicine at the University of Ottawa. She is a citizen of Saudi Arabia and resides in the City of Ottawa.

7. The plaintiff Waleed AlGhaithy (“AlGhaithy”) is a former medical resident in the Neurosurgery Program of the Faculty of Medicine at the University of Ottawa. He is a citizen of Saudi Arabia and resides in the City of Ottawa.
8. The defendant University of Ottawa ("the University") is a body corporate established by *The University of Ottawa Act, 1965*, S.O. 1965, c. 137 and is located in the City of Ottawa.
9. The defendant Jacques Bradwejn (“Dean Bradwejn”) is the Dean of the Faculty of Medicine at the University, a statutory office created under ss. 18 (1) of *The University of Ottawa Act, 1965*.
10. The defendant James Worthington (“Worthington”) is the Vice-President Medical Affairs and Patient Safety at the Ottawa Hospital, one of the major affiliated teaching hospitals with the University.
11. The defendant Paul Bragg (“Bragg”) is the Associate Dean of Postgraduate Medical Education at the Faculty of Medicine of the University, a statutory office created under s. 18(1) of *The University of Ottawa Act, 1965* and a position mandated by the Royal College of Physician and Surgeon of Canada accreditation requirements for residency training programs.
12. The defendant Eric Poulin (“Poulin”), a professor of General Surgery, Wilbert J. Keon Professor and Chair, is the Chair of the Department of Surgery at the University.
13. The defendant Thierry Mesana (“Mesana”), professor of Cardiac Surgery, is the Chair of the Division of Cardiac Surgery at the University of Ottawa Heart institute.
14. The defendant Fraser Rubens (“Rubens”), professor of Cardiac Surgery, is the Program Director of Cardiac Surgery, a position mandated by the Royal College of Physicians and Surgeons of Canada for medical residency training programs.
15. The defendant LLOYD Duchesne (“Duchesne”), is an associate professor in the division of Cardiology at the University.

16. The defendant Richard Moulton (“Moulton”), associate professor in Neurosurgery, is the Chair of the Division of Neurosurgery at the University and the Chief of the Division of Neurosurgery at the Ottawa Hospital.
17. The defendant John Sinclair (“Sinclair”), assistant professor in Neurosurgery, is a former Program Director of Neurosurgery, a position mandated by the Royal College of Physicians and Surgeons of Canada accreditation requirements for medical residency training Programs.
18. The defendant Eve Tsai (“Tsai”) is an assistant professor of Neurosurgery at the University.

Postgraduate Medical Education at the University of Ottawa

19. The plaintiffs were all accepted into postgraduate medical education programs at the University which were accredited by the Royal College of Physicians and Surgeons of Canada (hereinafter referred to as the “Royal College”).
20. Medicine is a regulated profession in all jurisdictions in Canada and the requirements for postgraduate medical training and registration are governed in Ontario primarily by the *Medicine Act, 1991*, S.O. 1991, c. 30 (“Medicine Act, 1991”) and the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (“Regulated Health Professions Act, 1991”) and regulations made thereunder.
21. The College of Physicians and Surgeon of Ontario (hereinafter referred to as the “CPSO”) is the body governing the profession of medicine in the province of Ontario. Section 2.1 of the *Health Professions Procedural Code* (being Schedule 2 of the *Regulated Health Professions Act, 1991* and deemed by s. 4 thereof to be a part of the *Medicine Act, 1991*) provides:

“It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals.”
22. Section 3(2) of the *Health Professions Procedural Code* further provides that in carrying out its objects, the CPSO has “a duty to serve and protect the public interest.”
23. To become licensed to practice as a neurosurgeon or cardiac surgeon, the plaintiffs were required to complete six years of residency at an accredited University Postgraduate

Medical Education program as required by the CPSO's registration regulations under the *Medicine Act, 1991*.

24. Residents who successfully complete the six years of medical residency are entitled to write the specialty qualifying examinations held by the Royal College, a qualification required by the CPSO for registration as an independent consultant and imposed by the legislature of Ontario. This qualification is recognized worldwide, including Saudi Arabia.
25. Postgraduate medical training in a residency program is deemed necessary by the *Medicine Act 1991* and regulations made thereunder to ensure that medical school graduates acquire the medical knowledge, clinical skills and judgment necessary to become a competent independent consultant.
26. At all times material hereto with respect to the claims of the plaintiffs:
 - (a) The *University of Ottawa Act, 1965*, s. 6 provided that the University "may establish and maintain faculties, schools, institutes, departments, chairs and courses";
 - (b) The *University of Ottawa Act, 1965*, s. 18 provided that every faculty established by the University shall be governed by a council, which, *inter alia*, "shall consist of the Dean, the Associate Dean, if any," which is entrusted under the statute with the good and efficient management of the affairs of the faculty;
 - (c) The *University of Ottawa Act, 1965* under s. 11(b) provided that the Board of Governors had the power to "appoint, promote and remove the heads of all faculties and schools, all officers of the University and of the faculties, the teaching staff of the University and all such other officers, clerks, employees, agents and servants as the Board deems necessary or expedient for the purposes of the University, but no person shall be appointed, promoted or removed as head of a faculty or school, as a senior administrative officer or as a member of the teaching staff of the University except on the recommendation of the Rector";

- (d) The University offered Postgraduate Medical Education Neurosurgery and Cardiac Surgery Programs which were six year residency programs, through its Faculty of Medicine;
- (e) Both the Neurosurgery and the Cardiac Surgery Programs were fully accredited by the Royal College which is designated by regulation in Ontario to be the accreditation body for postgraduate medical education programs; the Royal College is the national examining, certifying and training program accrediting body for medical specialties in Canada.
- (f) To obtain accreditation for postgraduate medical education programs, the University was required and bound by contract upon which the plaintiffs relied to strictly comply with the requirements set out by the Royal College in the “General Standards of Accreditation” regarding (1) the university and administrative structure that administers the accredited program including the committees and directors required, the composition and jurisdiction of each of the committees, the qualifications and composition of administrative staff; (2) requirements for evaluating the residents to ensure such evaluations were “transparent, objective, impartial and fair” in accordance with ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*; (3) the goals and objectives of the training; (4) the opportunities for learning which must be provided to the residents, both scholarly and clinical;
- (g) The defendant Dean Bradwejn held an appointment from 2008 onward at the University as the Dean of the Faculty of Medicine, a statutory office created under s. 18(1) of the *University of Ottawa Act, 1965*;
- (h) The defendant Bragg held an appointment at all material times at the University as the Associate Dean of Postgraduate Medical Education at the Faculty of Medicine, a statutory office created under s. 18(1) of the *University of Ottawa Act, 1965* and a position expressly required by the terms of accreditation by the Royal College as set out in its “General Standards of Accreditation” upon which the plaintiffs’ relied. The responsibilities of the office were for the overall conduct and supervision of postgraduate medical education within the faculty;

- (i) The defendant Moulton held an appointment at all material times at the University as the Chair of the Division of Neurosurgery, an office created under ss. 6 and 17 of the *University of Ottawa Act, 1965* and Program Director of the Neurosurgery Program from March 2007 to September 2008, a position expressly required by the terms of accreditation by the Royal College upon which the plaintiff's relied.
- (j) The defendant Sinclair was the Program Director of the Neurosurgery Program from September 2008 onward, a position mandated by the terms of accreditation by the Royal College;
- (k) The defendant Rubens was the Program Director of the Cardiac Surgery Program, a position mandated by the terms of accreditation with the Royal College;
- (l) The defendant Mesana held an appointment at all material time at the University as the Chair of the Division of Cardiac Surgery, an office created under ss. 6 and 17 of the *University of Ottawa Act, 1965*;
- (m) The Neurosurgery and Cardiac Surgery Programs were at all material times required by the terms of their accreditation to operate in compliance with the terms set out in the "General Standards of Accreditation" of the Royal College; to conduct evaluations which were objective, transparent, impartial and fair;
- (n) The Cardiac Surgery Program was at all material times further required by the terms of the accreditation by the Royal College to operate in compliance with the terms set out in the "Specific Standards of Accreditation for Residency Programs in Cardiac Surgery" of the Royal College and provide training to fulfill the terms set out in the "Objectives of Training in Cardiac Surgery" of the Royal College;
- (o) The Neurosurgery Program was at all material times further required by the terms of the accreditation by the Royal College to operate in compliance with the terms set out in the "Specific Standards of Accreditation for Residency Programs in Neurosurgery" of the Royal College and provide training to fulfill the terms set out in "Objectives of Training in the Specialty of Neurosurgery" of the Royal College;

- (p) All individual defendants holding appointments with the University were required to comply with the Faculty of Medicine “Standards of Ethical and Professional Behaviour” and also with professional standards of conduct as established by the CPSO and the University was required to ensure that its faculty and officers complied with such standards of professional behavior;
- (q) All defendants were at all material times required to evaluate medical residents in accordance with ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* which requires that such evaluation methods must be “transparent, objective, impartial and fair.” In compliance with this statutory requirement, the CPSO and its third party Royal College require evaluation policies at accredited Postgraduate Medical Education programs to comply with these statutorily mandated evaluation requirements through accreditation standards as set out in the Royal College’s “General Standards of Accreditation”;
- (r) At all material times, the University’s Faculty of Medicine Postgraduate Medical Education “Policies and Procedures for the Evaluation of Postgraduate Trainees” (the “Evaluation Policy”) expressly stipulated that “*Evaluation practices need to be consistent with the requirements of the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, the College of Physicians and Surgeons of Ontario and other relevant bodies.*”
- (s) The University’s accredited Postgraduate Medical Education programs, including the Neurosurgery and Cardiac Surgery Programs, were at all material times subject to ongoing surveys and reviews by the Royal College to ensure that they were complying with accreditation requirements; the opinions of the residents themselves were solicited during these reviews;
- (t) The Royal College was at all material times subject to ongoing review by the CPSO and the Fairness Commissioner appointed under the *Fair Access to Regulated Professions Act, 2006*, S.O. 2006, c. 31 to ensure that its accreditation requirements and standards which it imposed on Postgraduate Medical Programs, including those

of the University, were in compliance with the *Medicine Act, 1991*, and in particular, ss. 2.1, 3 and 22.2 and 22.4(2) of the *Health Professions Procedural Code*.

27. The University acts as an agent of the Ontario government in the implementation of a specific government policy or activity, namely, the training and assessment of medical residents in postgraduate medical specialties in accordance with the provisions cited above of the *Regulated Health Professions Act, 1991* and the *Medicine Act, 1991* and regulations made thereunder in a manner that ensures, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals and that individuals applying for registration by regulated health professions are governed by registration practices that are transparent, objective, impartial and fair.
28. As a result of the foregoing, the defendants and each of them were endowed with state-sanctioned rights and responsibilities imposed by the legislation referred to above and required to exercise their duties in compliance with the *Canadian Charter of Rights and Freedoms* pursuant to s. 32(1)(b) of the *Charter* as an agent of the Ontario government in the training and assessment of postgraduate medical residents. As a result of being a government sanctioned and regulated program, the defendants and each of them were bound to conduct the regulated activity in compliance with the *Charter of Rights and Freedoms*, specifically, sections 2(b), 7 and 15 and were government agents in so doing.

Certificate of Registration for Postgraduate Medical Education

29. Once receiving an appointment (Letter of Appointment) in a program of postgraduate medical education at an accredited Faculty of Medicine in Ontario, medical residents are required to hold a valid “Certificate of Registration for Postgraduate Medical Education” from the CPSO that allows them to “practise medicine only as required by the program in which the holder is enrolled” pursuant to s. 11(8) of *Ontario Regulation 865/93* promulgated under the *Medicine Act, 1991*.
30. The “Certificate of Registration for Postgraduate Medical Education” is valid for one year only and must be renewed annually. The office of Postgraduate Medical Education of the University prepares a Letter of Appointment which the Associate Dean (the defendant

Bragg) and the medical resident sign and which constitutes the contract between the University and the resident. The Letter sets out, *inter alia*, the postgraduate level the resident has attained in the Program to which he or she has been appointed. The University determines the level of medicine allowed to be practiced by the resident under his or her Certificate of Registration.

31. The *Health Professions Procedural Code* provides that:

22.2 The College has a duty to provide registration practices that are transparent, objective, impartial and fair.

22.4 (2) If the College makes its own assessment of qualifications, it shall do so in a way that is transparent, objective, impartial and fair and, if it relies on a third party to assess qualifications, it shall take reasonable measures to ensure that the third party makes the assessment in a way that is transparent, objective, impartial and fair.”

32. In the annual renewal of the “Certificate of Registration for Postgraduate Medical Education” for a medical resident, the CPSO relies on the University as the third party to assess the qualifications of the medical resident. In doing so, the University is required to assess the qualifications of medical residents in training in a manner that is “transparent, objective, impartial and fair” as required by s. 22.2 and 22.4(2) of the *Health Professions Procedural Code*.

33. In addition, the University is required to adhere to the transparent, objective, impartial and fair assessment of the qualifications of medical residents by the accreditation requirements of the Royal College which provides the administrative structure, procedures and objectives to ensure such compliance.

34. The requirements of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* constitute part of the Ontario government policy of ensuring, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals.

35. At all material times, this legislative scheme applied to the postgraduate medical training and assessment of the plaintiffs.

Evaluation Policy of Medical Residents at the University of Ottawa

36. The evaluation of the qualifications of postgraduate medical residents at the Faculty of Medicine at the University is governed by the Evaluation Policy. This policy constitutes part of the contract between the plaintiffs and the University.

37. The Evaluation Policy expressly recognizes the obligation of the University to evaluate medical residents as required by the CPSO and the Royal College. It provides:

“It is essential that there be a fair and transparent evaluation system for residents within the Postgraduate Training Programs of the Faculty of Medicine. [...] Evaluation practices need to be consistent with the requirements of the Royal College of Physicians and Surgeons, the College of Family Physicians of Canada, the College of Physicians and Surgeons of Ontario and other relevant bodies.”

38. The Evaluation Policy sets out the principles governing resident evaluations, the specific steps to be taken in evaluating a resident and the procedures for an “explicit transparent series of steps that need to be taken when evaluating a resident who encounters significant difficulties.”

39. It provided under s. 5-9 of Principles of Resident Evaluation:

“5. The grading of Resident performance should be fair and equitable.

(a) Systems of grading, leading to the successful completion of a Rotation, Year, and the Program (as well as completion of the Certificate of Completion of Training form) must be clear, applied uniformly and made explicit.

(b) Performance(s) that would lead to failure of a Rotation, remediation, probation, failure of a year or discharge from the program must also be clear, applied uniformly and made explicit.

6. Systems of Resident evaluation should be updated and continually critiqued.

7. The Program Director must ensure that all residents are familiar with the rules and regulations covering evaluation and promotion.

8. The evaluation process must be transparent and applied fairly.

9. The evaluation process must be confidential with respect to verbal feedback and documentation.”

40. Under the Evaluation Policy, only the Residency Program Committee (hereinafter referred to as the “RPC”), a committee specifically mandated by the “General Standards of Accreditation” of the Royal College, has the authority under the accreditation standards to monitor residents’ evaluations and performance. The RPC makes the final pass/fail decisions for all rotations based upon all available documentation. (Rotations are blocks of time spent by a resident in a particular area of practice within their specialty.)
41. The Evaluation Policy provides that a resident may be deemed to have failed a year if he or she did not complete a remedial rotation satisfactorily or he or she failed a rotation where the schedule did not allow for the appropriate period of remediation or if consistent difficulties identified throughout training were considered by the RPC to warrant a failure in the absence of failed rotation.
42. The Evaluation Policy also sets out the circumstances in which medical residents could be placed into remediation or probation, both of which had serious consequences for a medical resident.
43. Remediation is a structured program aimed at helping a resident to correct identified weaknesses. But a resident will be allowed only two rotations for remediation in any given training program. An additional failure or a failure to pass one of the remediation periods would lead to a recommendation for probation, or for dismissal.
44. Probation is defined by the Evaluation Policy as “a period of training like remediation, during which the resident is expected to correct identified weaknesses and/or deficiencies. However, unsuccessful completion of a probation period could lead to dismissal from the program. Probation should be applied in cases where a resident has failed, over the period of training to successfully complete a program of remediation, has failed at least two rotations or has successfully remediated two rotations and subsequently failed a third one. [...] Possible outcomes of a probationary period include full reinstatement, an additional probationary period, or dismissal from the Program. Extension of training may be required, to be negotiated on an individual basis.”

45. The Evaluation Policy expressly states that “for a few residents with difficulties, they need to be reassured that they are dealt with fairly. The following procedures allow for close monitoring of residents with difficulties, a period of remediation where needed, followed by a period of probation if required.”
46. The intent of the Evaluation Policy, including remediation and probation, is to assist medical residents in achieving training objectives. The plaintiffs plead and rely upon the Evaluation Policy in its entirety as well as the “General Standards of Accreditation” of the Royal College.
47. Residents who were dissatisfied with a decision with respect to their performance were entitled to appeal in accordance with the University’s “Appeal Mechanism” which is mandated by the Royal College’s “General Standards of Accreditation.”

Funding of Postgraduate Medical Education

48. Medical residents in Ontario must be compensated in accordance with current remuneration rates as negotiated by the Professional Association of Internees and Residents (“PAIRO”) and the Ontario Council of Teaching Hospitals.
49. Canadian residency positions in postgraduate medical training in the province Ontario is funded by the Ministry of Health and Long-Term Care with the objective of fulfilling a government policy that people of Ontario have adequate access to adequate numbers of qualified physicians.
50. The plaintiffs at all material times were “out-funded” by the Saudi Arabian Cultural Bureau which paid their residency position salaries, benefits and tuition fees, unlike Canadian medical residents.

Letters of Appointment with the University of Ottawa

51. The plaintiffs each signed Letters of Appointment (hereinafter referred to as “the standard contract”) for postgraduate medical training programs with the University’s Faculty of Medicine, Postgraduate Medical Education, for a term of one year and were so committed at all material times, renewable upon completion of each postgraduate year. Under the

contract formed between each of the plaintiffs and the University, the plaintiffs each did agree to, *inter alia*, the following express contractual terms:

- (a) “Register as a postgraduate student of this faculty and pay the required fee.... Official certification of completion of periods of postgraduate training necessary for the purposes of obtaining a certificate of registration from the College of Physicians and Surgeons of Ontario, or towards meeting the certification requirements of the Royal College of Physicians and Surgeons of Canada, the College of Family Physicians of Canada, or any other external body, will be contingent upon this registration;”
- (b) “Abide by the By-laws, rules and regulations of the University and the hospitals of other faculties to which you are appointed and assigned.”
- (c) “Adhere to the requirements of the *Public Hospitals Act*, the *Coroner’s Act*, the *Regulated Health Professions Act*, and the *Medicine Act*, and other applicable legislation and regulations;”
- (d) “Register and hold a valid certificate of registration authorizing postgraduate medical education from the College of Physicians and Surgeons of Ontario during the period of the appointment;”
- (e) “This letter, signed by you, constitutes a legally binding agreement to accept the foregoing. Failure to honour this agreement is a violation of Regulation 856/93 under the *Medicine Act*.”

These terms bind the plaintiffs and the University by contract.

52. In return, the University expressly agreed in the contract to provide each plaintiff with postgraduate medical training in an accredited Faculty of Medicine specialty Program (Neurosurgery in the case of AlGhaithy and Cardiac Surgery in the cases of Aba-Alkhail and Alsaigh) for a term of one year on a year to year basis. This accreditation included the provisions of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*.

53. The standard contract expressly provided that:

- (a) “During this period, you may be assigned for varying lengths of time to any of the hospitals, institutions or teaching practices associated with the education program of this University;”
- (b) “You will be expected to carry out within the hospital, institution or teaching practice to which you are appointed the usual responsibilities required of trainees at your level of training and in a manner befitting the profession as a whole and subject to University regulations;”
- (c) “Your Program Director will advise you of your specific rotations, clinical responsibilities and educational activities. Your involvement in the teaching of others is considered to be an essential part of your educational experience;”
- (d) “This appointment to a postgraduate training program is for the term noted above and is renewable upon successful completion of the year’s training. If applicable, successful completion of the Pre-Entry assessment Program (PEAP) is a condition of formal admission to the residency or fellowship program.”

54. This agreement bound the University and its officers and employees to comply with its terms as well as the plaintiffs.

55. The plaintiffs plead that the University, by contracting to provide Royal College accredited Faculty of Medicine postgraduate medical training (as required by the CPSO), agreed expressly, or in the alternative, by implied terms that the University and its faculty officers and staff, collectively and individually, would:

- (a) Provide and operate Postgraduate Medical Education programs in compliance with its accreditation with the Royal College;
- (b) comply with the terms of the “General Standards of Accreditation” of the Royal College which sets out the requirements that accredited Postgraduate Education Programs are mandated to follow;

- (c) comply with the specific standards of accreditation for residency programs in neurosurgery and cardiac surgery as mandated by the Royal College;
- (d) provide effective training to fulfill the objectives of training in each specialty as required by the Royal College;
- (e) be assigned to the hospitals, institutions or teaching practices that would fulfill the training requirements for the Postgraduate Medical Education level contracted for (i.e., Postgraduate Year 1 or its short form, PGY-1, PGY-2, etc.);
- (f) be assigned by their Program Directors to specific rotations, clinical responsibilities and educational activities that would fulfill the Royal College training requirements for the Postgraduate Medical Education level contracted for;
- (g) provide opportunities for the plaintiffs to attain all competencies as outlined in the objectives of training of the Royal College;
- (h) comply with the accreditation requirement that ongoing reviews of the Program to assess the quality of the education experience must take the opinions of the residents into account and must take place in an open and collegial atmosphere allowing for a free discussion of the strengths and weaknesses of the program without hindrance and respects confidentiality;
- (i) comply with the *Medicine Act, 1991* and the *Regulated Health Professions Act, 1991* and all other applicable legislation and regulations;
- (j) adhere to the Evaluation Policy of the Faculty of Medicine, which policies and procedures were in fulfillment of the University's obligations under ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* to assess the qualifications of the residents in a manner that was "transparent, objective, impartial and fair";
- (k) comply with principles of natural justice and procedural fairness in carrying out their responsibilities for training and comply with the provisions of the *Charter of Rights and Freedoms*, s. 2(b), 7 and 15 as state-sanctioned agents;

- (l) act in furtherance of a fiduciary duty to those entrusted with their training pursuant to the obligations set out in the *Health Professions Procedural Code* and the accreditation requirements of the Royal College;
- (m) act in good faith to provide the plaintiffs with the best opportunities for success in fulfilling the residency requirements in order to carry out the legislative public policy objectives of the Ontario government to educate sufficient numbers of qualified doctors.

Fiduciary Relationship

56. The plaintiffs plead that the relationship between the plaintiffs and their Program Director were special ones, in the nature of a fiduciary relationship. The position of Program Director was required by the Royal College's "General Standards of Accreditation" for each program.
57. The "General Standards of Accreditation" provides that the Program Director is responsible for the overall conduct of the integrated residency program including its planning, organization, and supervision; further, it must be planned and operated such that it meets the general standards of accreditation, and the specific standards of accreditation of programs in the specialty as set forth in the specialty document. The program must also provide opportunities for residents to attain all competencies as outlined in the objectives of training.
58. Those endowed by government sanction with regulatory authority, such as the defendants, are placed in a position of fiduciary duty as government agents towards those who rely upon them for training to meet the standards of government regulated certification. As a result of these defendants' relationship with the plaintiffs, they were fiduciaries and owed a fiduciary duty to the plaintiffs.
59. In their role as Program Directors, Rubens, Sinclair and Moulton had considerable discretionary powers of decision and influence over the medical residents as set out in the Evaluation Policy, including educational and clinical opportunities and assignments, rotations, evaluations, promotions, discipline and/or remediation or probation.

60. The standard contract signed by each plaintiff expressly provided that it was the Program Director who advised each of their specific rotations, clinical responsibilities and educational activities, thus creating a fiduciary duty to each plaintiff.
61. The power differential between the defendant Program Directors and the plaintiffs was very large, as the plaintiffs were completely under their direction and were vulnerable to and had little recourse against any abuse of such power by the Program Directors.
62. The plaintiffs trusted and were of necessity dependent upon their Program Directors to act in good faith, honestly and fairly and with due regard for the plaintiffs' interests in reaching the objectives of training.

Dr. Waleed AlGhaithy

63. AlGhaithy was trained as a medical doctor in Saudi Arabia and after several years of practice in that country he was accepted into the Neurosurgery Program, a six year residency, at the defendant University of Ottawa in 2005. The plaintiff was an out-funded medical resident, meaning that his residency position was funded by Saudi Arabia, not the Ontario government.
64. AlGhaithy signed the standard contract appointing him to the first Postgraduate Year ("PGY-1") training level of the Neurosurgery Program on May 18, 2005 for a one year term from July 1, 2005 to June 30, 2006.
65. The standard contract, dated April 1, 2009, was entered into when the plaintiff was successfully promoted to PGY-5 and was in force at the time of the plaintiff's dismissal.
66. During the plaintiff's time in the Program, the defendant Bragg held the position of Associate Dean, Postgraduate Medical Education.
67. From the start of the plaintiff's residency to early 2007, the Program Director was Dr. Charles Agbi. Thereafter, the defendant Moulton held the dual positions of Chair and Program Director, Division of Neurosurgery. The defendant John Sinclair took over the position of Program Director in September of 2008.

68. AlGhaithy became a very successful medical resident at the University, attaining high levels of clinical and academic success culminating in the Neurosurgery Program's recommendation to the Royal College that he write the final specialty examination one year early. He was appointed by defendant Moulton to a term as Chief Resident of the Neurosurgery Program in 2008.

Unlawful Remediation

69. On October 15, 2007, the plaintiff AlGhaithy reported to the defendant Moulton, the Program Director at the time, on the unfair and discriminatory treatment he was being subjected to by the defendant Tsai, an assistant professor in the Faculty of Medicine. These complaints, unbeknownst to the plaintiff AlGhaithy at the time, set in motion a series of actions against him by Moulton, who was Tsai's mentor, with the intent of placing AlGhaithy in remediation.
70. In February 2008, the plaintiff AlGhaithy received a complaint from a patient's daughter that was filed with Moulton on January 21, 2008. Moulton handled the complaint in a grossly unfair and non-transparent manner. On February 21, 2008, Moulton wrote privately without the knowledge of AlGhaithy to the daughter supporting her allegations without conducting any investigation contrary to the Faculty of Medicine "Standards of Ethical and Professional Behaviour" and the requirements of the Evaluation Policy and natural justice. This private letter was withheld from AlGhaithy's knowledge for more than two years until disclosed after dismissal in March 2010, during the appeal process.
71. On April 14, 2008, the plaintiff AlGhaithy was placed by Moulton on remediation. At the meeting with Moulton and another doctor, Moulton told the plaintiff that he either signed the remediation contract or he had to resign from the Neurosurgery Program. The plaintiff was intimidated and felt he had no choice but to sign as Moulton was not only the Program Director but the Chair of the Division, to whom he would have to appeal. The remediation was unlawful in that it was never approved by the RPC (which had sole jurisdiction to place the plaintiff into remediation) a fact the plaintiff learned only after his dismissal during the appeal process in 2010. This action later became apparent as part of a scheme, later manifest, to intimidate, humiliate and discriminate against AlGhaithy.

72. The remediation contract was effective from April 14, 2008 to July 30, 2008. Two years later and during the appeal of his dismissal (March 2010), the Neurosurgery Program disclosed documents revealing the unlawful actions of Moulton during the relevant time, as follows.
73. Moulton utilized the Divisional meetings in November 2007, February 2008, and March 2008 to malign AlGhaithy in his absence and without notice to him, to inform Division members of allegations of unprofessional conduct with hospital staff and to build a consensus that he required remediation. The plaintiff had received no explicit written warning about this alleged behavior, contrary to the Evaluation Policy. Further, the Royal College accreditation standards and the Evaluation Policy give jurisdiction only to the RPC to place a medical resident into remediation. The Division of Neurosurgery had no authority to discuss or decide remediation for AlGhaithy. Moulton acted contrary to the established policy and procedure by discussing accusations against AlGhaithy at the divisional meeting in his absence and thereby maliciously defamed him, which only came to the knowledge of the plaintiff AlGhaithy in March 2010.
74. Moulton provided members of the Division with misleading information that he had a discussion with AlGhaithy “at some length” about alleged interpersonal difficulties. He had never done so. This was a deliberate misrepresentation to the divisional meeting by Moulton which was maliciously conveyed to the divisional meeting in AlGhaithy’s absence, only to be revealed to him in March 2010.
75. AlGhaithy was never given any opportunity by Moulton to dispute any allegations or their truth, contrary to natural justice and due process. Any problems with AlGhaithy should have been brought to the RPC which was the only committee with authority to monitor residents' conduct in accordance with the Evaluation Policy and the Royal College accreditation standards. These remarks and breaches of procedure maliciously made by Moulton were first revealed to the plaintiff AlGhaithy after dismissal in March 2010.
76. The Neurosurgery Program disclosed to the plaintiff in the appeal process (March 2010) documents that were received by Moulton before the remediation that were withheld from

the plaintiff AlGhaithy at the time contrary to the Evaluation Policy and natural justice, as follows:

- (a) A defamatory and prejudicial memorandum from Dr. Benoit to the defendant Moulton dated March 5, 2008 that was sent privately to Moulton and never revealed to the plaintiff contrary to the requirements of the Evaluation Policy that medical residents be given explicit warnings of conduct that might lead to remediation, and contrary to natural justice;
- (b) Numerous supportive letters by residents, medical students, and a liaison nurse that were not disclosed to AlGhaithy at the time by Moulton contrary to the Evaluation Policy and natural justice.
- (c) Medical students' evaluations including nominations of AlGhaithy for "best surgical resident" that were never revealed to the plaintiff at the time, contrary to the requirements of the Evaluation Policy and natural justice.
- (d) Two letters from nurses to Moulton which confirmed that the patient's daughter's complaint was unfounded were never revealed to the plaintiff at the time, contrary to the Evaluation Policy and natural justice.
- (e) Negative documents that were relied on by Moulton, including a letter from a nurse, two incident reports, a letter from a social worker were never revealed to the plaintiff at the time, contrary to the Evaluation Policy and natural justice, and denied him the right to answer the allegations and complaints.

77. The Evaluation Policy required that a recommendation for remediation must be brought to the RPC by the Program Director and that decisions regarding remediation should be taken by the RPC only after consultation between the resident and the Program Director. Moulton took none of these steps. The plaintiff was forced into remediation through intimidation by Moulton who had no authority to do so under the Evaluation Policy and the General Standards of Accreditation and in deliberate breach of the required procedures meant to protect residents and provide due process. This was without AlGhaithy's knowledge at the time, as aforesaid.

78. During the remediation (June 2008), Moulton appointed AlGhaithy to be the Chief Resident of the Neurosurgery Program. Simultaneously AlGhaithy was promoted to the next Postgraduate Year 4 (PGY-4). Moulton knew that placing AlGhaithy on remediation was baseless and illegitimate, yet he intentionally and maliciously proceeded to harm and injure AlGhaithy's residency by placing him on remediation, a status which had serious implications for his residency as it was later referred to as one of the justifications for his dismissal. AlGhaithy successfully completed his remediation July 30, 2008.
79. AlGhaithy successfully completed his rotations requirement of adult Neurosurgery as mandated by the Royal College at the Ottawa Hospital and his term as the Chief Resident in January 2009. From January 2009 to June 2009, AlGhaithy successfully completed his pediatric Neurosurgery rotation at the Childrens' Hospital of Eastern Ontario.

Complaints about racial discrimination and quality of Neurosurgery Program

80. In February 2009, AlGhaithy began to express his concerns about the Neurosurgery Program in the form of emails sent to the defendant Sinclair, who had replaced Moulton as Program Director, and to Moulton, as Chair of the Division and to the Associate Dean Postgraduate Medical Education, the defendant Bragg. His concerns were made confidentially and sometimes circulated to the residents within the Program. His criticism stemmed mainly from the lack of academics in the Program, the non-collegial governance and his experience of discriminatory treatment of residents of Arabic origin.
81. On March 20, 2009, AlGhaithy and three other Arabic residents lodged a formal complaint of unprofessional conduct of harassment and discrimination based on race and/or ethnicity against the defendant Tsai pursuant to the Faculty of Medicine "Standards of Ethical and Professional Behaviour." AlGhaithy was selected the spokesperson *de facto* of the complainants. The complainants requested immediate intervention and asked that the residents making the complaint be protected from any repercussions.
82. After the complaint against the defendant Tsai was filed by the Arabic residents, the defendants Bragg, the Associate Dean of Postgraduate Medical Education, Moulton, the Chair of the Neurosurgery Division, Worthington, the Vice-President Medical Affairs and

Patient Safety at the Ottawa Hospital where residents trained, Eric Poulin, Chief of Surgery, and the Dean of the Faculty of Medicine, Bradwejn entered into an agreement to conspire against AlGhaithy, the predominant purpose of which was to injure AlGhaithy by dismissing and/or suspending him from the Program, even though there was no just cause to do so, in order to intimidate the other Arabic residents from pursuing discrimination complaints against Tsai or any other faculty member in the future. The evidence of this conspiracy to injure came to the plaintiff AlGhaithy's knowledge in February of 2011 through emails leaked by an anonymous person naming himself/herself "Neuroleaks."

83. In furtherance of the conspiracy, in or about June of 2009, in secret, the defendants Bragg, Worthington, and Moulton worked together on the planned dismissal and/or suspension of AlGhaithy, including a draft dismissal/suspension letter. Bragg advised Moulton on how to word the letter, what parts of the evaluation policy might be used against AlGhaithy and what to use as evidence against him. At the time the defendants Bragg and Moulton, the very people to whom an appeal would be made from dismissal by the RPC were secretly planning his dismissal and /or suspension in June of 2009, the plaintiff AlGhaithy was never notified or warned about any offensive conduct, contrary to the Evaluation Policy, the "General Standards of Accreditation", natural justice and procedural fairness.
84. In furtherance of the conspiracy, in July 2009, the defendant Moulton wrote Bragg that the plaintiff was "a real destructive force within the program" and vowed that if the complaint laid against Tsai was dismissed, the residents who laid the complaint, which included AlGhaithy, would be suspended or dismissed. The plaintiff AlGhaithy learned this in or around July of 2010 and February of 2011 through the "Neuroleaks" leaked emails.
85. In furtherance of the conspiracy, on or about October 3, 2009, the defendant Moulton advised the defendant Tsai that he had been working closely with Bragg and Worthington to dismiss AlGhaithy and he assured her they were close to their goal even though "conventional methods" had not worked because of AlGhaithy's popularity among the residents and the fact he was a strong resident and probably the best in the Neurosurgery Program. The plaintiff obtained this knowledge from the "Neuroleaks" emails leaked in February of 2011.

86. In furtherance of the conspiracy, the defendants Bradwejn and Poulin kept silent about what was happening but gave their high level approval of Bragg and Moulton's unlawful and malicious actions which were meant to injure not only the plaintiff but other residents of Arabic origin who felt they were being discriminated against.
87. In furtherance of the conspiracy, the defendant Tsai continued to sit on the RPC, even though she was the subject of the complaint by the residents and the RPC had the power to place residents in remediation, probation or to dismiss them.
88. In June 2009, the defendant Sinclair prevented the usual annual election of residents to the RPC. Residents from the previous year were allowed to continue for the next academic year (2009/2010), thus denying the plaintiff AlGhaithy the opportunity to sit on the Committee to voice his concerns about the Program in breach of the Royal College "General Standards of Accreditation."
89. Before July 2009, AlGhaithy wrote emails to the defendants Bragg, Moulton and Sinclair as the administrators of the Neurosurgery Program and the postgraduate medical education office, complaining about the lack of academics and teaching days, the unfairness of some of the exam procedures, the lack of respect for the residents and other matters concerning the administration of the Program. He was never warned that any of these communications could lead to dismissal or any other penalty. In many cases, he received no response to the letters. His communications were intended for the improvement of the Neurosurgery Program of which he was a part.
90. In July of 2009, AlGhaithy was regularly promoted from PGY-4 to PGY-5.
91. On July 13, 2009, the plaintiff had a meeting with the defendants Moulton and Sinclair at their request. He was shown a one page letter which stated that successful completion of his residency would be predicated upon "*Maintenance of professional comportment and behaviour including but not exclusive to written and oral communication with faculty, resident colleagues, and others.*" The plaintiff wrote to Moulton with copies to Sinclair and Bragg officially requesting that the Neurosurgery Program and Division of Neurosurgery explain what they were referring to in the paragraph about professional

behaviour. He received no response and on August 11, 2009 sent another email to the three doctors asking for a reply. In furtherance of the conspiracy, the defendants Bragg, Moulton and Sinclair made no reply to the plaintiff as they intended to use the letter against him without providing evidence he could refute or defend against.

92. Throughout much of the year, up to September 2009, the Neurosurgery Program and the defendant Moulton supported AlGhaithy's attempts to write the Royal College specialty exam one year early on the grounds that he was already fully competent to be an independent consultant. The Royal College, however, insisted that the plaintiff had to complete the full six year residency. This demonstrated the high degree of professional competence of AlGhaithy.
93. On October 20, 2009, the plaintiff was given a "pass" on his ITER for a Neuropathology rotation whose supervisors were Drs. Gerard Jansen and John Woulfe. He protested three marginal grades in the ITER evaluation to Bragg, with a copy to Moulton.
94. In furtherance of the conspiracy, on October 22, 2009, Moulton encouraged Jansen and Woulfe to not reconsider the marginal grades which they had given to AlGhaithy. Moulton made defamatory statements to the supervisors about AlGhaithy, writing: "He is absolutely incapable of rationally dealing with any kind of negative feedback", and "He skipped his neuradiology rotation completely and had major attendance problems with his neurology rotation. Stick to your guns." These statements were false and maliciously published by the defendant Moulton. Moulton prompted the supervisors to cancel a confirmed rotation for the plaintiff. Dr. Woulfe emailed the plaintiff back on October 22, 2009 telling him that his passing grade had been made in consensus with Dr. Jansen. The facts pertinent to this incident became known to AlGhaithy during the appeal process in March, 2010.
95. On November 24, 2009, the plaintiff laid a confidential complaint with the defendant Bradwejn, with a copy to Bragg against the defendant Moulton for unprofessionalism because he used profanity to describe PAIRO, the medical residents' association, during a meeting of the residents.

96. The defendant Bragg immediately forwarded the complaint to Moulton and Sinclair and meetings took place over the next few days in which plans were made in furtherance of the conspiracy, and in retaliation for the plaintiff's complaint against the defendant Moulton for unprofessionalism, to dismiss the plaintiff using the Neuropathology rotation as the means even though he had been given a "pass" on the rotation on his ITER.
97. In furtherance of the conspiracy against AlGhaithy, Moulton solicited Jansen to write a private email to him on November 26, 2009 stating that Jansen would have failed the plaintiff on the Neuropathology rotation based on attendance and canceling a previously confirmed rotation in 2010. This email and the others described in paragraphs 94-97 came to the knowledge of the plaintiff in 2010 during the appeal process.
98. The defendant Sinclair emailed on Nov. 29, 2009 that he had "grave concerns" about the plaintiff's "escalating disruptive behavior" and filed a letter to Bragg stating he would advocate AlGhaithy's dismissal at the "next Residency Program Committee meeting which is scheduled for coming week." The plaintiff had at no time been given notice or warning of the matters set out in the letter of November 29, 2009 sent by Sinclair, contrary to the Evaluation Policy and the "General Standards of Accreditation" which required explicit warnings of any conduct that would lead to dismissal or where any serious concerns existed. This letter was defamatory only came to the plaintiff's knowledge when it was disclosed to him pursuant to the appeal process in 2010. It was included in appeal submissions and prejudiced the appeal committees against the plaintiff.
99. On December 1, 2009, the defendants Moulton and Sinclair attended a meeting of the Neurosurgery Division which took place at 5:00 PM in which they raised the "serious issue" about the plaintiff's neuropathology rotation which they stated might lead to his dismissal, thus preparing the other members of the Division psychologically for the dismissal to come.
100. In furtherance of the conspiracy, on the same evening of Dec. 1, 2009, a hastily arranged *in camera* meeting of the RPC took place. The defendant Tsai was called to and attended the meeting and remained in the room even when it was evident that the plaintiff

was the only matter to be discussed and she had been instructed by her lawyer not to take part in any proceedings involving AlGhaithy.

101. The only documents put before the members were the emails from Drs. Woulfe and Jansen relating to the Neuropathology rotation. It was understood that if the plaintiff was failed on his Neuropathology rotation, he was also to be dismissed from the Program. There was no written motion to dismiss.

102. In furtherance of the conspiracy, the defendant Moulton voted against the plaintiff AlGhaithy although he had no voting rights at RPC meetings as an *ex officio* member as Chair of the Division and although he knew he was the subject of a complaint against him by the plaintiff AlGhaithy for unprofessionalism. Moulton never disclosed the existence of the complaint to the other members present.

103. In furtherance of the conspiracy the defendant Sinclair voted to fail the plaintiff on his Neuropathology rotation.

104. The Minutes of the meeting show that the plaintiff was failed by the majority of the RPC on his neuropathology rotation. The Minutes stated thereafter:

“The second issue at hand is Dr. AIGhaithy's disruptive and unprofessional conduct. Dr. Sinclair moved to have Dr. AIGhaithy dismissed from the Neurosurgery Resident Training program at the University of Ottawa. The program will not continue to tolerate this behaviour. It was agreed that this is the only option.”

105. There was no record of any vote taken to dismiss the plaintiff or who voted if such a vote did take place. In furtherance of the conspiracy, the sparse Minutes of the *in camera* meeting of Dec. 1, 2009 were never approved by the RPC at any subsequent meeting.

106. On the morning of Dec. 2, 2009, the defendant Moulton emailed Bragg informing him that the RPC had met the night before and failed the plaintiff on his Neuropathology rotation. The email made no reference to any decision by the RPC to dismiss the applicant. The email asked about the draft dismissal letter which the defendants were already having prepared.

107. On December 11, 2009, while in Toronto doing a rotation, the plaintiff was informed that the RPC met on Dec. 2, 2009 (not Dec. 1) and failed him on the neuropathology rotation and recommended that he be dismissed from the Program. He was also suspended immediately from the Program by the defendant Sinclair, contrary to the Evaluation Policy which stated that suspensions could only occur in cases where patient care was at risk. There was no evidence whatsoever that the plaintiff was jeopardizing patient care. The plaintiff's rotation in Toronto at the Hospital for Sick Children was terminated on December 16, 2009 by the defendant Sinclair.

108. The reasons given for the dismissal in the letter of December 11, 2009 included the emails written by the plaintiff criticizing the Program and the failure of the Neuropathology rotation. AlGhaithy had, exercising his rights under s. 2(b) of the *Charter*, criticized the Program to the appropriate authority, functioning as a whistle blower seeking remedial action for perceived injustices.

109. The plaintiff appealed both dismissal and suspension and the decision to fail him on the Neuropathology rotation. During the appeal process, the Program produced Minutes of the RPC of December 1, 2009. The Neurosurgery Program repeatedly told appeal committees that the date of Dec. 1 was a "typo" and that the real date of the meeting was December 2, 2009 as stated in the dismissal letter. This was a falsehood in order to deceive the plaintiff and his lawyer as to exactly what had happened. The plaintiff was only able in 2011 to obtain the real RPC minutes for its meeting on Dec. 2, 2009. Those minutes, for the regular RPC meeting that day, showed no discussion about him.

110. Prior to December 11, 2009, AlGhaithy was not given advance notice of any behaviour that might lead to dismissal, or any notice that the RPC would be discussing his possible failure of the Neuropathology rotation or dismissal, any opportunity to respond prior to his dismissal, or any hearing on the decision to dismiss him from the Neurosurgery Program, contrary to the Evaluation Policy, the "General Standards of Accreditation" and natural justice.

111. In internal university appeals, the failure of the Neuropathology rotation was successfully overturned but the dismissal, which was dependent upon failure of the Neuropathology

rotation, was not. At no time did the University advise the appeal committees that if they overturned the Neuropathology rotation failure, they must also overturn the dismissal.

112. In the various appeal levels, in the University in 2010 and up to January 2011 and including the Senate Appeals Committee, the defendants Bragg, Poulin, and Bradwejn were part of the appeal process. In the decision-making of the appeal process, University counsel Alain Roussy was allowed to participate in drafting the initial dismissal letters, advising the various levels of appeal and communicating with Bragg, Moulton, Sinclair and Bradwejn in furtherance of the conspiracy and contrary to natural justice.

113. Following his dismissal, the defendants Bragg and Sinclair acted intentionally and in violation of s. 85. 5 of the *Health Professions Procedural Code* by failing to notify the CPSO of the reasons of the plaintiff's dismissal to conceal the manifestly unlawful conduct of the University and the individual defendants.

114. The conduct of defendants as set forth above demonstrates malice, wantonness, willfulness, evil motive or intent and reckless or callous indifference to the rights of AlGhaithy.

115. As a result of AlGhaithy's wrongful dismissal, he has been deprived of his entire livelihood and career, and subjected to great humiliation and mental anguish and subjected to other damages later to be listed.

Wrongful dismissal

116. The plaintiff AlGhaithy states that it was an implied term of his contract with the defendant University that the University would not dismiss the plaintiff from the University's Postgraduate training program in Neurosurgery without just cause.

117. The plaintiff AlGhaithy states that at all times while the plaintiff was a medical resident in the Neurosurgery Program, the plaintiff carried out his duties in a diligent and professional manner, abided by all terms and conditions set out in his Letters of Appointment (the standard contract) and proved himself to be a valuable and reliable medical resident.

118. The plaintiff AlGhaithy states that his contract with the defendant University for postgraduate medical training in Neurosurgery has been terminated without just cause.
119. The plaintiff states that as a result of the breach of his contract by the defendant University, he has sustained damages including such remuneration as he would have enjoyed during the remainder of his medical residency and career.
120. The plaintiff states that as a result of his wrongful dismissal from the postgraduate Neurosurgery training program by the defendant University, the plaintiff has suffered mental anguish, humiliation and loss of dignity in front of his peers and damage to his professional reputation which has affected the plaintiff's physical and mental health and enjoyment of life. The plaintiff states that his mental anguish and physical impairment was foreseeable by the defendants.
121. The plaintiff states that by reason of his wrongful dismissal from the postgraduate Neurosurgery training program by the defendant University, he has suffered irreparable damage to his reputation and loss of his opportunity and ability to earn his living as a qualified neurosurgeon in the future.

Conspiracy to Injure

122. The plaintiff states that the defendants Dean Bradwejn, Poulin, Sinclair, Moulton, Worthington, Tsai and Bragg conspired to injure him by causing him to be unjustly dismissed and/or suspended from the postgraduate medical training program in Neurosurgery. The plaintiff states that the conspiracy amongst the defendants arose after the plaintiff joined in laying a complaint against the defendant Tsai of racial discrimination and harassment and its implementation was accelerated after the plaintiff laid the complaint of unprofessionalism against Moulton. The plaintiff states that the defendants engaged and participated in a common design, the dominant purpose of which was to cause injury, humiliation and aggravation to the plaintiff by dismissing/suspending him as retaliation and retribution for laying complaints against the defendants Tsai and Moulton and to ensure that other Arabic students would become frightened and remain silent.

123. The defendants conspired to not give the explicit notice that any of his behaviours could lead to dismissal as required by the Evaluation Policy and “General Standards of Accreditation”. By doing so, they denied the plaintiff any opportunity to remediate any serious deficiencies if they existed, which was the defendants’ intention.
124. The plaintiff further states the defendants committed the overt acts pleaded in the paragraphs above, causing the plaintiff’s medical residency training contract to be breached and causing injury to the plaintiff and that their actions throughout had no legitimate object, and indeed had the dominant purpose of causing injury to the plaintiff. The plaintiff states and the fact is that the defendants’ actions were directed toward injuring the plaintiff rather than to the legitimate interests of evaluating the plaintiff in an honest, clear, transparent and objective manner in accordance with the Evaluation Policy and the “General Standards of Accreditation” and that the defendants knew that injury to the plaintiff would result.
125. As a result of the aforementioned conspiracy by the defendants the plaintiff has suffered damages including, but not limited to, the termination of his medical residency, loss of reputation, humiliation, and mental distress, shock, anxiety and loss of livelihood and future ability to practice as a neurosurgeon.

Misfeasance in Public Office

126. The defendants Dean Bradwejn, Bragg, Sinclair, and Moulton and each of them are liable for damages to the plaintiff AlGhaithy for exercising their powers as public officers for an improper purpose, intentionally in a manner that exceeded their authority, and/or recklessly disregarding whether they had such power and knowing that their actions would injure the plaintiff, and /or were done recklessly or with willful blindness to the possibility of such injury, as follows:
- (a) The defendants Dean Bradwejn, Bragg, Sinclair, and Moulton used their public offices to assist in and coordinate a scheme to dismiss and/or suspend the plaintiff AlGhaithy from his residency for no just cause but to punish him for exercising his

- right to complain about racial discrimination with respect to the defendant Tsai and about unprofessionalism with respect to Moulton;
- (b) The defendants Bragg, Sinclair and Moulton used their public offices to manipulate the evaluation and assessment of the plaintiff AlGhaithy in a malicious, wrongful manner in order to make his unjust dismissal look legal and in accordance with University policy and Royal College accreditation requirements;
 - (c) The defendant Moulton, using his public offices of Chair of the Neurosurgery Division and Program Director, placed the plaintiff into an unlawful remediation effective from April 14, 2008 to July 30, 2008. The remediation was unlawful as it was not approved or ratified by the RPC which had sole jurisdiction to place a resident into remediation. Moulton defamed the plaintiff at Neurosurgery Division meetings, and failed his duty to disclose documents to the plaintiff which supported the plaintiff's professionalism as well as documents which contained complaints against him, thereby depriving him of the opportunity to answer the complaints.
 - (d) The defendant Moulton used his public offices to wrongfully damage the plaintiff's reputation in his profession by false allegations that he was a destructive force in the Neurosurgery Program, was unprofessional and beyond remediation;
 - (e) The defendants Dean Bradwejn, Bragg, Moulton and Sinclair used their public offices to cause the wrongful dismissal of the plaintiff AlGhaithy and destroy his professional career in order to intimidate, frighten and silence the other Arabic Neurosurgery residents so they would not complain about racial or ethnic discrimination in the residency program, contrary to the Evaluation Policy and/or the General Standards of Accreditation and/or s. 15 of the Canadian Charter of Rights and Freedoms;
 - (f) The defendants Dean Bradwejn, Bragg, Moulton and Sinclair used the extensive powers of their public offices over medical residents in a malicious, biased, prejudicial manner against the plaintiff, contrary to their duties to evaluate the plaintiff in a "transparent, objective, impartial and fair" manner and to act in good

faith pursuant to ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* and the Evaluation Policy;

- (g) The defendants Bragg, Sinclair and Moulton perpetrated and allowed the creation of a poisoned work environment permeated with discrimination against Arabic nationals, including AlGhaithy, such that he did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
- (h) The defendant Sinclair used his public office, contrary to the Evaluation Policy and “General Standards of Accreditation”, to immediately suspend AlGhaithy on December 11, 2009 when he knew that such suspension was unlawful since no patient safety issues ever existed to justify the suspension;
- (i) The defendant Moulton voted to fail the plaintiff AlGhaithy on his Neuropathology rotation and to dismiss him at the meeting of the RPC on December 1, 2009, knowing he had no voting rights as *ex officio* member and that his vote was unlawful, and did so with intent to injure the plaintiff;
- (j) The defendant Moulton unlawfully voted to fail the plaintiff AlGhaithy on his Neuropathology rotation and to dismiss him at the meeting of the RPC on December 1, 2009, knowing he had a complaint laid against him by the plaintiff for unprofessionalism, thereby denying the plaintiff procedural fairness and doing so with intent to injure the plaintiff;
- (k) The defendants Moulton and Sinclair used their public offices to injure the plaintiff by falsely stating in the dismissal letter that the plaintiff had “[d]uring the period of training preceding remediation you failed to attend a 2 month Neuroradiology rotation resulting in failure of that rotation. Your lack of professionalism in that circumstance caused the faculty of the Division of Neuroradiology to refuse to provide you with any further training in Neuroradiology. This, amongst other problems, led to the decision to place you on remediation.” There is no evidence that the RPC ever failed the plaintiff on the Neuroadiology rotation, and the plaintiff was

never informed that he had failed the rotation, thus denying him rights of appeal if in fact he was failed. The defendants Moulton and Sinclair included this falsehood in the dismissal letter to injure the plaintiff and to justify the unlawful dismissal;

(l) The defendants Sinclair and Moulton knowingly used their public offices to deceive the plaintiff in the letter of dismissal of December 11, 2009 in which they told him the RPC meeting was held on December 2, 2009 when in fact it had been held on December 1, 2009, thereby deceiving the plaintiff into believing the dismissal and rotation failure had occurred following a regular RPC meeting, when such resident evaluations were usually conducted confidentially. The defendants Bragg, Sinclair and Moulton continued this deceit throughout the appeal process as appeal committees were consistently told the meeting was on December 2, 2009;

(m) The defendants Bragg and Sinclair failed to report the dismissal and suspension of the plaintiff from clinical duties for professional misconduct to the CPSO as required by s. 85.5 of the *Health Professions Procedure Code*, thereby preventing any investigation by the CPSO into the dismissal.

127. As a result of the misfeasance of the said defendants, the plaintiff AlGhaithy suffered damages including but not limited to loss of time, self-esteem, anxiety, depression, loss of educational opportunity, loss of income, and humiliation with his sponsor, the Saudi government. The plaintiff states he has suffered irreparable damage to his reputation and loss of his opportunity to finish his medical residency and the ability to earn his living in the future as a neurosurgeon.

Breach of Fiduciary Duty

128. The defendants Dean Bradwejn, Bragg, Moulton and Sinclair are liable in damages to the plaintiff AlGhaithy for breach of their fiduciary duty to him in respect of the same conduct particularized in paragraphs 126 for which he has suffered irreparable damage.

129. As Program Directors, Moulton and Sinclair had a particular fiduciary duty pursuant to the standard contract signed with AlGhaithy to act as fiduciaries which they breached. The plaintiff suffered damages as a result of this breach as particularized below.

Defamation by the defendant Moulton

130. On or about July 11, 2009, the defendant Moulton falsely and maliciously published of and concerning the plaintiff AlGhaithy, personally and in the way of his profession and calling, the following defamatory words:

“I'm meeting with Al-Ghaithy Monday afternoon to deliver his list of conditions for completion of his residency, and I'd like to be able to tackle this ongoing behaviour with something a little more substantial than 'please don't do this anymore'. This guy is a real destructive force within the program.

If the complaint against Eve is dismissed there are going to have to be some significant consequences for the involved parties (dismissal/suspension) or we are going to be facing this ad infinitum.”

131. The said defamatory words were published by way of email to the defendants Bragg and Worthington and other persons unknown. The plaintiff first discovered the existence of the email when it was disclosed by an anonymous person in July 2010 via email to the University community.

132. AlGhaithy complains of and intends to rely on the entirety of the email published by the defendant in which these defamatory words appear.

133. AlGhaithy states that the defamatory words, in their natural and ordinary meaning, and by innuendo, meant and were understood to mean the following: that AlGhaithy is a destructive person within the Neurosurgery Program; a person intent on destroying the defendant Eve Tsai and using other residents to do so; a person destroying the program by laying a complaint of discrimination against the defendant Tsai; the plaintiff is an evil force having a malicious and destructive influence on the other residents within the Program and the Program itself.

134. The defamatory words published by the defendant Moulton, and the innuendo arising from them, are false and were maliciously published by the defendant knowing that they were false or with careless disregard as to whether they were true or not.

135. As a result of the publication of the defamatory words, the plaintiff has been subjected to hatred and contempt and has suffered damages to his reputation personally and in the way of his profession and calling.
136. As a result of the defamatory words, and all repetitions and republication of them, the plaintiff AlGhaithy has been injured in his feelings, in his personal and professional character and reputation, and in his profession and calling. The plaintiff has also suffered personal embarrassment and humiliation and lost his life's work to date.
137. As a result of all of the foregoing, the plaintiff has suffered and will continue to suffer damages for which the defendant Moulton is liable.
138. The malicious, high-handed, callous and arrogant conduct of the defendant Moulton as aforesaid displays a wanton and flagrant disregard for the plaintiff's rights. Such conduct warrants an award of punitive, aggravated and exemplary damages to ensure that Moulton is appropriately punished for his conduct and that he is deterred from such conduct in the future.

Defamation by the defendant Sinclair

139. On or about November 29, 2009, the defendant Sinclair falsely and maliciously published of and concerning the plaintiff AlGhaithy, personally and in the way of his profession and calling, the following defamatory words:
- “Despite numerous requests on multiple occasions, Dr. Al Ghaithy continues to circulate emails on a weekly basis with inappropriate content and statements that have been perceived as threatening. Although he completed a previous period of academic remediation for unprofessional conduct, Dr. Al Ghaithy's behavior has once again become unacceptable with numerous complaints by fellow residents, teaching faculty, allied health care staff, and hospital administrative staff.”
140. The said defamatory words were published by way of letter to the defendant Bragg and other persons unknown. The plaintiff first discovered the existence of the email when it was disclosed in the appeal process in 2010. AlGhaithy complains of and intends to rely on the entirety of the letter published by the defendant in which these defamatory words appear.

141. AlGhaithy states that the defamatory words, in their natural and ordinary meaning, and by innuendo, meant and were understood to mean the following: that AlGhaithy has sent out emails constantly that are threatening; that AlGhaithy has sent out emails constantly that are frightening people; that his behaviour is unprofessional and unacceptable as a physician; that AlGhaithy's behaviour so unprofessional that it has become the subject of complaints by fellow residents, teaching faculty, allied health care staff, and hospital administrative staff; that he has a history of unprofessional conduct that necessitated remediation.
142. The defamatory words published by the defendant Sinclair, and the innuendo arising from them, are false and were maliciously published by the defendant knowing that they were false or with careless disregard as to whether they were true or not.
143. As a result of the publication of the defamatory words, the plaintiff has been subjected to hatred and contempt and has suffered damages to his reputation personally and in the way of his profession and calling.
144. As a result of the defamatory words, and all repetitions and republication of them, the plaintiff AlGhaithy has been injured in his feelings, in his personal and professional character and reputation, and in his profession and calling. The plaintiff has also suffered personal embarrassment and humiliation and lost his life's work to date.
145. As a result of all of the foregoing, the plaintiff has suffered and will continue to suffer damages for which the defendant Sinclair is liable.
146. The malicious, high-handed, callous and arrogant conduct of the defendant Sinclair as aforesaid displays a wanton and flagrant disregard for the plaintiff's rights. Such conduct warrants an award of punitive, aggravated and exemplary damages to ensure that Sinclair is appropriately punished for his conduct and that he is deterred from such conduct in the future.

Negligence and Breach of Contract

147. In the alternative, the plaintiff AlGaithy pleads that the defendants Dean Bradwejn, Bragg, Moulton and Sinclair owed a duty of care to the plaintiff to carry out their respective obligations with the skill, judgment, competence and diligence reasonably to be expected of ordinarily competent academic professionals and medical residency program administrators. The defendants breached their duty of care to the plaintiff and performed their services negligently, and in breach of contract, the particulars of which include but are not limited to the following:
- (a) The defendants and each of them breached their duty of care by assisting in and coordinating a scheme to dismiss/suspend the plaintiff AlGaithy from his residency for no just cause but to punish him for exercising his right to complain about racial discrimination with respect to the defendant Tsai and about unprofessionalism with respect to the defendant Moulton;
 - (b) The defendant Bragg, Moulton and Sinclair breached their duty of care by manipulating the evaluation and assessment of the plaintiff AlGaithy in order to make his unjust dismissal look legal and in accordance with University policy and Royal College “General Standards of Accreditation”;
 - (c) The defendant Moulton breached his duty of care by using his public offices of Chair of the Neurosurgery Division and Program Director, to place the plaintiff into remediation effective from April 14, 2008 to July 30, 2008 without any authority from the RPC which had sole jurisdiction to place a resident into remediation. Moulton failed his duty to disclose documents to the plaintiff which supported the plaintiff’s professionalism as well as documents which contained complaints against him, thereby depriving him of the opportunity to answer the complaints.
 - (d) The defendants Moulton and Sinclair recklessly damaged the plaintiff’s reputation in his profession by false allegations that he was a disruptive force in the Neurosurgery Program, was unprofessional and beyond remediation and used such allegations to cause the dismissal of the plaintiff;

- (e) The defendants and each of them recklessly and wantonly used their offices and positions to cause the dismissal of the plaintiff AlGhaithy unjustly and to destroy his professional career in order to intimidate, frighten and silence the other Arab Neurosurgery residents so they would not complain about racial or ethnic discrimination in the residency program;
- (f) The defendants and each of them recklessly and wantonly used their offices and positions to cause the dismissal of the plaintiff AlGhaithy unjustly and to destroy his professional career in order to retaliate against him for laying the complaint against Moulton of unprofessionalism;
- (g) The defendant Sinclair recklessly and wantonly immediately suspended AlGhaithy on December 11, 2009 when he knew or ought to have known that such suspension was unlawful since no patient safety issues ever existed to justify the suspension;
- (h) The defendant Moulton voted to fail the plaintiff AlGhaithy on his Neuropatholgy rotation and to dismiss him at the meeting of the RPC on December 1, 2009, knowing he had no right to vote as *ex officio* member and that his vote was unlawful, and did so recklessly and wantonly, when he knew or ought to have known that he would injure the plaintiff by so doing;
- (i) The defendant Moulton voted to fail the plaintiff AlGhaithy on his Neuropatholgy rotation and to dismiss him at the meeting of the RPC on December 1, 2009, knowing he had a complaint laid against him by the plaintiff for unprofessionalism, and did so recklessly and wantonly when he knew or ought to have known that by doing so he was denying the plaintiff procedural fairness and injuring the plaintiff;
- (j) The defendants Moulton and Sinclair breached their duty of care to the plaintiff by recklessly and wantonly stating in the dismissal letter that the plaintiff had “[d]uring the period of training preceding remediation you failed to attend a 2 month Neuroradiology rotation resulting in failure of that rotation. Your lack of professionalism in that circumstance caused the faculty of the Division of Neuroradiology to refuse to provide you with any further training in Neuroradiology.

This, amongst other problems, led to the decision to place you on remediation.” The defendants knew or ought to have known that the RPC had never failed the plaintiff on the Neurodiology rotation and that the plaintiff had never been informed he had been failed.

- (k) The defendants Sinclair and Moulton breached their duty of care to the plaintiff by sending the letter of dismissal of December 11, 2009 in which they told him the RPC meeting was held on December 2, 2009 when in fact it had been held on December 1, 2009. The defendants Bragg, Sinclair and Moulton continued this reckless misinformation throughout the appeal process as appeal committees were consistently told the meeting was on December 2, 2009;
- (l) The defendants Bragg, Moulton and Sinclair negligently and wantonly used the extensive powers of their public offices over medical residents in a malicious, biased, prejudicial manner against the plaintiff, contrary to their duties to evaluate the plaintiff in a “transparent, objective, impartial and fair” manner and to act in good faith pursuant to ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* and the Evaluation Policy;
- (m) The defendants Bragg, Moulton and Sinclair breached their duty of care by perpetrating and allowing the creation of a poisoned work environment permeated with discrimination against Arabic nationals, including AlGhaithy, such that he did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
- (n) The defendants Bragg and Sinclair breached their duty to report the dismissal and suspension of the plaintiff from clinical duties for professional misconduct to the CPSO which they knew or ought to have known was required by s. 85.5 of the *Health Professions Procedure Code*, thereby preventing any investigation by the CPSO into the dismissal.

148. The plaintiff says that the conduct of the defendants and each of them was in wanton disregard for the plaintiff's rights, as a registered medical resident in the Neurosurgery

Program, to be taught in an environment free from intimidation, discrimination and abuse and his right to be evaluated fairly and in good faith, based on his actual work in an environment which respected his rights to criticize the quality of the Program and the professionalism of its faculty without retaliation.

149. The defendants are liable in damages to the plaintiff for such breach of their duty of care and breach of contract, as particularized below. The damages suffered by the plaintiff were a direct and foreseeable consequence of the failure on the part of the defendants to carry out their duties to the plaintiff.

Breach of 2(b) Charter rights

150. The University is liable for damages suffered by the plaintiff AlGhaithy for violating his right to freedom of expression under s. 2(b) of the *Canadian Charter of Rights and Freedoms* which violation was not justified under s. 1 thereof. The emails he had written criticizing the quality and administration of the Program, his complaints against the defendants Tsai and Moulton, were a basis for his dismissal from the Neurosurgery Program in direct breach of his constitutional rights to freedom of expression.

151. The plaintiff pleads that the *Charter* is applicable to the University, as agent for the Ontario government in implementing a specific government program, namely, the education and training of postgraduate medical residents in medical specialties, as pleaded above, under s. 32 (1) (b) of the *Charter*.

152. The emails were justified by the Evaluation Policy and the “General Standards of Accreditation” of the Royal College which made it mandatory that the medical residency programs take the opinions of residents into account in assessing the quality of the educational experience.

153. Damages should be allowed as assessed, and are just and appropriate as the plaintiff AlGhaithy has suffered loss of reputation, loss of livelihood, loss of professional opportunity, anxiety, humiliation, and loss of time and financial investment in his medical residency. The arrogant and high-handed conduct of the defendant University warrants the imposition of aggravated damages for violation of the constitutional rights of the plaintiff.

Dr. Manal Alsaigh

154. Alsaigh was trained as a medical doctor in Saudi Arabia and was accepted into the Cardiac Surgery Program at the University in 2003. The plaintiff was an out-funded resident, meaning that her residency position was funded by Saudi Arabia, not the Ontario government. Her intent was to return to Saudi Arabia to practice as a cardiac surgeon.
155. Alsaigh signed the standard contract appointing her to the first Postgraduate Year (“PGY-1”) training level of the Cardiac Surgery Program in 2003 for a one year term from July 1, 2003 to June 30, 2004.
156. At the time, Alsaigh was the only female medical resident in cardiac surgery in Canada.
157. Beginning almost immediately, Alsaigh was subject to treatment that was demeaning, bullying, humiliating and harassing by the defendant Mesana, Chief of Cardiac Surgery at the University of Ottawa Heart Institute and Professor and Chair of Cardiac Surgery at the University of Ottawa, positions of decisive power and influence within the Program.
158. In her first week of residency, when Alsaigh inquired with the defendant Mesana about joining him for a research project, Mesana refused and stated he would not risk and compromise his research by including Alsaigh. At the same time, Mesana told Alsaigh that she would never reach PGY-4 and even if she did, he would dismiss her. He gave no reason for making such a threatening and intimidating statement to her.
159. During the first year of residency, Mesana dismissed her from the operating room where she had been assigned to assist, for no reason, shouting, “What are you doing here, this is not your place!”
160. On various academic days in 2004, where the plaintiff Alsaigh was the only foreign resident in attendance, the defendants Mesana and Rubens each at different times told the residents that Cardiac Surgery was not going to take any more Saudi residents since they were now getting good funding from the government and didn’t need the money that came from Saudi resident sponsors. They also spoke about new protocols that would lessen the workload in the future for the rest of the residents. The plaintiff Alsaigh was the last foreign resident accepted into the Program who graduated from a Saudi medical school.

The plaintiff was deeply humiliated by these statements which denigrated Saudi residents and saw their value only as the money the University could get out of them from their sponsors.

161. The plaintiff was told by other residents that Mesana would say that females should not be allowed into cardiac surgery. She was told by a Canadian Fellow in Cardiac Surgery in 2006 that “they are going to destroy you. You are a full package for them, Muslim, female and Saudi.” These types of conversations greatly stressed the plaintiff because the negative, differential treatment the defendant Mesana gave to her supported these statements.
162. Although Alsaigh only worked with Mesana during PGY-1 on three occasions during her Cardiac Surgery rotation in 2004, he commented in an evaluation that he had “some concerns about her ability to perform within our division in the future” without providing any explanation for this statement.
163. While Alsaigh was in PGY-2, Mesana would not allow her to operate with him, although he allowed other PGY-1s to assist him in surgery, follow-up with his patients and perform on-call duties with him. She worked with him only once or twice when she was on-call. A nurse told her that Mesana did not want the plaintiff to look after his patients if she was on call. The nurses were to call Mesana directly even at night.
164. Throughout PGY-2, the plaintiff on a regular basis was confronted with Mesana’s hostile and demeaning conduct. One day in Cardiac Surgery Intensive Care Unit (CSICU), the plaintiff was treating one of Mesana’s patients who started to deteriorate. When Mesana came, he shouted at the plaintiff in front of hospital staff. The CSICU doctor in charge of the unit for that week was forced to tell Mesana that the plaintiff had done everything correctly.
165. Mesana refused to talk to the plaintiff directly if there were nurses or other doctors there to whom he would give orders.
166. The plaintiff experienced severe ongoing stress by demeaning, differential treatment which constituted harassment that was discriminatory and without any rational purpose.

167. While in PGY-2, the defendant Rubens advised Alsaigh that she was not to take any consultations from outside of the Civic Hospital. No reason was given for this decision which was not applied to any other resident.
168. She was told by Rubens not to ask for more participation in the operating room, something which other residents did regularly in order to obtain experience. She was told to wait until the staff asked her to do things “when they were ready.” She worried she could not maintain her skills without practice. Rubens would say, “I am going to watch you closely. If you disobey me, something you don’t like is going to happen.”
169. In 2007, the plaintiff requested a copy of her file or to see the file at Ruben’s office; she was initially told she could see the file in his office, but then she was refused all access to it. She got copies only of her ITERS. This enhanced her perception that something was in the file which was causing her to be treated in a differential manner.
170. Rubens told her not to say “Sure” to him when receiving instructions from him; she was to say, “Yes, sir.” An operating room nurse told the plaintiff she should not do this as she was not his “slave.” When she asked Rubens for clarification or the rationale for specific instructions to her, she was told by Rubens “just do what I say, stop arguing with me.” She became afraid to ask questions and was extraordinarily stressed daily by this instruction from Rubens since residents could only learn by being able to ask questions of supervisors about various patient cases.
171. This hostile and poisoned work environment caused the plaintiff to suffer daily, chronic, ongoing stress about the quality of her work, her future and her abilities. She consulted the head of the Resident Wellbeing Centre, Monique Beaulne to obtain help and advice which she relied upon as she was alone in Canada and socially isolated.
172. At the beginning of January 2005, the plaintiff requested and received a two week leave of absence to go back to Saudi Arabia to see her sick father, to whom she was very close, and who had encouraged her ambition to become a cardiac surgeon.
173. Upon her return, during an academic day case presentation on March 2, 2005, the defendant Mesana asked Alsaigh questions about the patient’s management. After she

gave her answer, he screamed at her in front of the other residents that he would send her to jail for this choice of treatment and fail her. He repeated this even after he was informed by the presenting resident that the treatment she proposed was the one actually used successfully in the case study.

174. The plaintiff suffered immediate and severe emotional shock from this incident which shattered her confidence. She called Monique Beaulne who arranged an appointment with a psychiatrist at Ottawa Hospital. After meeting with the psychiatrist, Dr. Susan MacNeill, the plaintiff was placed on immediate sick leave for two weeks to start after being diagnosed with severe depression and placed on medication. The sick leave was later extended by Dr. Caroline Gerin-Lajoie.
175. The ongoing bullying and abusive treatment of the plaintiff by Mesana, the head of the Cardiac Surgery division, and in particular but not limited to, his shouting threats to the plaintiff to put her in jail for her suggested treatment of a patient, was extreme, flagrant and outrageous, was calculated to produce harm and did in fact result in a visible and provable injury to the plaintiff Alsaigh. The plaintiff was plunged into a severe depression from which she thereafter struggled to recover. The plaintiff Alsaigh suffered extreme anxiety, hopelessness about her career path and future, insomnia and depression.
176. The plaintiff returned to Saudi Arabia to heal and obtain support of family and friends. The plaintiff's father, who had been sick, unexpectedly died in June of 2005, an event which was devastating to the plaintiff given her condition of depression. She remained in Saudi Arabia on extended leaves of absence from the defendant University.
177. By October 2005, the defendant Rubens, her Program Director, had formed the opinion that the defendant was not suitable for a career in cardiac surgery and that she should not be allowed to continue in the program as it would be "cruel" to do so since she couldn't handle stress. This opinion determined his treatment of the plaintiff from then on no matter how the plaintiff performed on her rotations.
178. The plaintiff returned to Canada in March of 2006. Prior to re-entering the Program, she was required to submit to a psychiatric assessment by a physician in Ottawa who determined that she was fit to return.

179. The plaintiff was placed in remediation starting May 1, 2006 until August as a PGY-1.
180. Prior to starting, the defendant Rubens, acting as her remediation supervisor as well as Program Director, told the plaintiff that to pass her remediation would be a real war, a battle that was going to be very hard. He asked the plaintiff if she wanted to change programs as he was willing to highly recommend her elsewhere. This was the beginning of his attempts to remove her from the Program.
181. The plaintiff was asked by another doctor before she started the remediation whether she had heard what Mesana had said about her but he did not say what Mesana had said. This uncertainty upset the plaintiff again because she could not see what she was doing to deserve this treatment.
182. Although the remediation contract specified that the defendant Rubens was to meet with her weekly to discuss her progress, he did so only three times during the first three months of the remediation. Nevertheless, he told the plaintiff verbally that she was “very good” and had no problems with her skills, knowledge or communication.
183. In April of 2006, on advice from Monique Beaulne, Alsaigh met with the defendant Bragg to confidentially tell him about the racist and hostile attitude of the defendant Mesana and the fear and intimidation she felt as a result. She told him she was not getting the operative experience she should be getting. She feared for her career in Cardiac Surgery which was her passion. Bragg told her the Cardiac Surgery people were “evil” but she would have to learn to cope with them. He offered to help her transfer out of Ottawa but this was not feasible. He promised to investigate the situation. Alsaigh was very stressed, worried and frightened.
184. On June 2, 2006, the hospital attempted to call the plaintiff by pager and by telephoning her repeatedly at home but she did not answer. She investigated and found that the pager appeared to be malfunctioning and that the hospital had not been calling her home telephone number but her cell phone which she turned off while she was at home. The defendant Rubens wrote the plaintiff a warning letter, stating: “No further warnings will be given and should this behavior occur again, we will take whatever steps are necessary

to terminate your position.” The letter made clear that the reasons for the failure to answer didn’t matter.

185. A second incident with the pagers occurred some weeks later. The plaintiff had obtained permission from the Chief Resident to be absent from the hospital for one hour, from 8 am to 9 am. She had a loaner pager from the Communications Centre, not her usual pager. The plaintiff informed the head nurse for each floor just before she left to make sure they knew she was going to be gone for an hour and to ensure all patients were stable. She returned to the hospital at 9:00 am and received a page from one of the floors almost immediately. She went up to the floor and was told by the nurse in charge of the patient that the head nurse had instructed her to page Rubens to tell him there was no resident on the floor to check the patient. The defendant Rubens angrily berated her and said his secretary had been repeatedly paging her and telephoning her and she had not answered. However, the secretary had been telephoning the plaintiff’s cell phone which she did not carry with her and the secretary had failed to use the Communications Centre to locate the plaintiff. Since the plaintiff had a loaner pager, only the Communications Centre could locate her and the secretary had failed to follow normal procedure in using the Communication Centre to page the plaintiff.

186. A month later, on the night of August 14, 2006, the plaintiff was on call covering the floor as well as the Cardiac Surgery Intensive Care Unit (CSICU) on the underground level of the hospital. She went to sleep in one of the assigned on-call rooms beside the CSICU and informed the head nurse of CSICU of her location. The nurse coordinator awoke her at 5 am, telling her the floor had been paging her. An investigation by the Communication Centre at the hospital confirmed that the plaintiff’s pager was malfunctioning and she did not receive the messages.

187. The nurse coordinator complained orally to Rubens about this incident. A day later, an enraged Rubens yelled at the plaintiff “You blew it. You jeopardized patient safety.” He told her this was her last chance and that he would rather have no resident than an irresponsible one. He told her he was going to write to Bragg and inform all of the doctors about what had happened to decide about dismissing her from the program, not because of her lack of skill or knowledge but because of the pager problems.

188. The plaintiff told the defendant Rubens that other residents had problems with the pagers and were regularly paged over the intercom at the hospital because of it. She had not intentionally done anything to jeopardize patient safety. He refused her explanations and the plaintiff was reduced to crying because she believed her medical residency was over.
189. The plaintiff wrote a letter explaining the pager incidents and stating that she realized the full importance of answering the pages and that at no time had she intentionally not answered. She expressed despair that she would fail her remediation for something she had not done intentionally.
190. She wrote to Monique Beaulne at the Resident Wellness Centre saying she was “overwhelmed” by what was happening to her and asking Beaulne her opinion and “correct me if I am wrong I am here to learn & change my self to the best.”
191. Problems with pagers occurred regularly in the hospital environment. The treatment of the plaintiff was abusive, bullying, intimidating and humiliating by the defendant Rubens for incidents that were caused by either technical glitches or failures to call the right numbers by either Rubens’ secretary or the Communication Centre. The treatment of the plaintiff was differential as other residents had problems with their pagers but were never threatened with outright dismissal for such incidents; they were treated as minor, regular occurrences that happened in the hospital environment.
192. On August 22, 2006, the plaintiff assisted at an operation performed by the defendant Mesana after she had specifically asked the Chief Resident if she could do so. During the operation, one of the nurses complimented the plaintiff on her skill at which point the defendant Mesana stated that “even monkeys can do this surgery if we teach them”, a reference to the plaintiff which deeply humiliated her in front of the staff.
193. On August 30, 2006, the plaintiff was promoted to PGY-2 but she was required to sign a contract with the following sentence: “However it must be understood that any evidence of negative behavioral aspects which jeopardize patient care in any manner will not be tolerated and will be grounds for immediate dismissal from the residency program.”

194. The defendant Rubens told the plaintiff in his office that she should look at that line and told her that if she jeopardized patient safety, she would be dismissed and there would be no right of appeal, no PAIRO, no lawyer and no Royal College involved.
195. The plaintiff consulted with Bragg who advised her to sign the contract but to add the words in her own handwriting, “according to rules and regulations of the University of Ottawa”, which she did. The defendant Rubens privately told Bragg on September 6, 2006 that he was not comfortable with this as “we are not prepared to go through a long process of remediation/probation etc. if she demonstrates a major lapse in responsibility that jeopardizes care.”
196. The plaintiff was told by Rubens to either sign the contract without the written notation or she was finished in the Program. She was told Bragg, Mesana and Masters all agreed with this position. Given that it was Bragg who advised her to add the notation, the plaintiff did not know if it was Bragg who was misleading her or if Rubens was lying. The plaintiff signed the contract with no additions in her handwriting on September 8, 2006 to save her residency.
197. The defendant Bragg assured her in an email sent on September 8, 2006 that the policies of the University still applied to her whether or not Rubens didn’t intend to follow the policy. The plaintiff suffered further injury to her emotional wellbeing knowing that Rubens, her Program Director, wanted to dismiss her and deny her all rights as a resident.
198. In October 2007, the plaintiff was on call with Mesana. He asked a surgical assistant who was qualified as a cardiac surgeon to do rounds of patients on the floor with the plaintiff because Mesana didn’t trust her. However, the assistant later told the plaintiff he could not understand why Mesana had made this request as she knew what she was doing. As this was an unusual situation, the surgical assistant left to inform the defendant Mesana that he was not needed to round with the plaintiff.
199. On February 11, 2007, the plaintiff and her mother were passengers in a car involved in an accident in Ottawa. The plaintiff’s mother was taken to Ottawa Civic Hospital where she died in the trauma unit. The plaintiff left Ottawa immediately with her mother’s body

to return to Saudi Arabia for burial. She returned to Canada and the Program in April of 2007.

200. On September 13, 2007, a complaint of unprofessional conduct was made against the plaintiff by an emergency room doctor, Dr. Jeff Perry, about a consultation call he had with the plaintiff. She was accused of being rude and short with him.

201. Rubens wrote the plaintiff that “these are very serious allegations. This will have to be dealt with by meeting with the people concerned and hearing everyone’s story, including yours.” The plaintiff disputed Perry’s version of events and requested that the meeting take place as soon as possible.

202. Rubens told Dr. Perry that Dr. Lam had supported the plaintiff’s version of events and it was necessary to hold a meeting to “get the facts straight” given that Perry had made a formal complaint that was public. Although a meeting of all staff involved was planned, it was repeatedly postponed.

203. The plaintiff was told on September 26, 2007 by Rubens that Dr. Lam had refused to participate in the meeting so it was not going to take place. The plaintiff requested that the meeting be scheduled anyway so that she could confront her accusers because they had lied about what had happened. She requested the presence of a PAIRO representative for the meeting.

204. However, no meeting ever took place although the plaintiff repeatedly requested one since her reputation and career were jeopardized. Rubens told her to either let it go or write a letter of apology. She refused to write a letter of apology as she had done nothing wrong.

205. To the end of October at least, the defendant Rubens repeatedly pushed the plaintiff to write a letter of apology to Dr. Perry. When the plaintiff again refused and requested a meeting of the staff involved in the incident, Rubens told her there would be no meeting and the case was closed.

206. However, a private meeting did occur between Dr. Perry and Dr. Lam, without the plaintiff. Rubens wrote in a memo that it was agreed that the plaintiff was “partially

correct” in her response to Dr. Perry at the time but that she should have been more “polite” and “respectful” and so she should take a conflict resolution course. The plaintiff had no knowledge of what happened at this meeting, but when the plaintiff spoke to Dr. Lam, he told her that he had supported her “100%”. The plaintiff obtained documents pursuant to an application under the *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31 (hereinafter referred to as “Freedom of Information”) in 2011 that disclosed Rubens’ memo on this meeting.

207. The plaintiff was wrongfully denied due process and procedural fairness by the defendant Rubens and the University in a matter that damaged her professional reputation. The Perry complaint was subsequently used against her by the defendant Rubens to severely damage her reputation within the Cardiac Surgery Division, deny her rotations outside Ottawa, to require her to complete a conflict resolution course and to justify the Program’s later refusal to promote her to PGY-4 and other damages noted below. The plaintiff was unaware of how this complaint was used against her until she received disclosure under the Freedom of Information request in 2011 documenting Rubens’ actions.

208. On January 15, 2008, the defendant Rubens wrote an email to Bragg in which he used the Perry complaint to defame the plaintiff by painting her as an anxious, unstable, obsessive resident with no “insight” into her behavior, who failed had to accept “responsibility” for her behavior with Perry and who irrationally thought the “entire system” was against her.

209. In the same email, Rubens accused her of being unable to get the Perry complaint “out of her mind” and was using it as an excuse to switch “all of her non-cardiac Ottawa rotations to electives elsewhere in Canada so that she can avoid the Emergency Room at the Ottawa Hospital.” This was untrue to Rubens’ knowledge. The plaintiff had only requested that she not do a rotation in the Ottawa Hospital which might involve the trauma unit as that was where her mother had died the day of the accident. The request had nothing to do with the complaint of Dr. Perry.

210. Rubens, as Program Director, used like defamatory statements to convince members of the Cardiac Surgery Division to agree that “the extraordinary alternatives that are being sought for this single conflict with this physician [Dr. Perry] are inappropriate” and that

she should either do her work in Ottawa or “just switch to another program.” The January 15, 2008 email by the defendant Rubens came to the plaintiff’s knowledge in 2011 when it was disclosed to her under a Freedom of Information request to the University.

211. Because of his defamatory statements and misrepresentation of the facts to the Cardiac Surgery Division, the plaintiff was denied the right to do rotations outside Ottawa in such places as Edmonton which had top programs in pediatric cardiac surgery, the plaintiff’s special interest, unlike other residents who were regularly allowed rotations elsewhere. They severely damaged the plaintiff’s reputation in the Cardiac Surgery Division which relied upon Rubens, as Program Director, to know what he was talking about regarding the plaintiff. His statements informed the Division’s decisions regarding her residency.
212. The plaintiff told Rubens on January 17, 2008 that she had never told him that she wanted to do two rotations outside of Ottawa so as to avoid Dr. Perry. She wanted to avoid the hospital because her mother had died there and the physician who had attended her that terrible day, a person she got on well with. She told him she in fact had done a rotation at the hospital and would do a future Vascular rotation there but if she could avoid it for some rotations, she thought it was something she could ask for as a human being. Rubens intentionally ignored this explanation from the plaintiff.
213. The plaintiff’s treatment by the defendant Rubens regarding the formal complaint of Dr. Perry distressed her because she was not treated fairly and she seemed to have no means of defending herself. She again went into depression. In February of 2008, at the urging of her treating psychiatrist, who felt the plaintiff was affected by the anniversary of the death of her mother as well as the extreme stress at work, the plaintiff again took medical leaves of absences for depression.
214. In July of 2008, Rubens finally filed an ITER (In-Training Evaluation Report) for a Research Enrichment rotation the plaintiff had completed in February of 2008. He failed her. Later, during appeals by the plaintiff in 2010, he was forced to admit that the rotation had to be considered a pass because of failure to follow the Evaluation Policy. But prior to this admission, Rubens used the rotation failure against her.

215. In a letter to the plaintiff dated May 26, 2008 and received by her sometime in July, Rubens told the plaintiff she would have to re-do her entire PGY-3 year when she returned and she would not be allowed to do elective rotations outside of Ottawa. Rubens denied her application to go to Edmonton to do Pediatric cardiac surgery. He said the reason for this was “because of concerns with your academic progress.” This contradicted Rubens’ real reasons which he had set out in his email to Bragg on January 15, 2008.
216. When the plaintiff returned in September of 2008, she found her full-time status with the defendant University had been cancelled due to her failure to register for the 2008-2009 academic year. Bragg requested a letter from her treating physician and an assessment by a second physician as to her fitness to train, specifically, “that your health will withstand the duress of a Cardiac Surgery Residency.” The plaintiff did so. The defendants Rubens and Bragg believed the plaintiff would dishonestly fish around for a compliant doctor but Bragg found out the doctor the plaintiff consulted was an old friend and reliable. The plaintiff’s return to clinical work was delayed by months by the insistence of Bragg and Rubens that the plaintiff be assessed by a second physician as to her fitness to train, an unnecessary and unwarranted requirement.
217. The registration problems the plaintiff endured were caused by the refusal of the Program to contact her via a Yahoo! Email account which she provided them with while she was in Saudi Arabia. She told them that she could not access her email account at the Heart Institute while in Saudi Arabia which at the time seemed to have blocking software in place. The Program administrators almost always refused to use the Yahoo! email account. Further, the Program had failed to send her the standard contract earlier in the year as it usually did.
218. On October 23, 2008, the plaintiff signed an Extension of Training Agreement which provided that she was to “re-commence as a PGY-3 when she returns, finishing all missed rotations.”
219. The plaintiff signed the standard contract on December 19, 2008 in which she was to train at the PGY-3 level from January 13, 2009 to June 30, 2009. She returned to clinical training on January 13, 2009.

220. However, in February of 2009, the plaintiff was sent another standard contract, dated February 12, 2009, which provided that she would be forced to repeat her entire PGY-3 again and would not be eligible for promotion to PGY-4 until January 12, 2010. She had not been notified or consulted about this new contract which contradicted the contract she was working under.
221. The plaintiff protested to the defendant Rubens, confused about what had precipitated this sudden change in her status and was told she had “agreed” to this in the Extension of Training contract and been notified of this requirement in 2008. The plaintiff appealed this decision on March 5, 2009 and requested disclosure but the appeal was never processed by the University using multiple, varying reasons.
222. Bragg sent a “without prejudice” letter dated April 7, 2009 to the plaintiff’s lawyer offering to settle the matter by allowing the plaintiff to do her missed rotations until June 30, 2009. Thereafter, Bragg stated, her promotion to PGY-4 would be determined in accordance with the Evaluation Policy. The offer was conditional on the plaintiff discontinuing her appeal. The plaintiff refused this offer on April 27, 2009. No reply was received. On May 6, 2009, the plaintiff’s lawyer wrote again about the appeal and demanding disclosure but no disclosure was ever given pursuant to the appeal. The University’s lawyer wrote on June 11, 2009 that the appeal was out of time and in any event, the Program did not require her at this time to repeat PGY-3 but only the missed rotations.
223. The defendants Bragg and Rubens agreed to conspire against the plaintiff to injure her by denying her promotion to PGY-4 in July of 2009 and opening a way for her eventual dismissal from the Program. The defendants engaged in a common design, the dominant purpose of which was to cause injury to the plaintiff by forcing her to repeat her entire PGY-3 year, to cause her mental distress and to build a consensus that she was not fit to be in Cardiac Surgery. Their actions were directed against the plaintiff and not for any legitimate purpose in honestly assessing the plaintiff in an objective, transparent, impartial and fair manner as required by the Evaluation Policy and the “General Standards of Accreditation.”

224. On January 21, 2009, the plaintiff attended a Conflict Resolution Workshop for residents, which had been required by the defendant Rubens since the complaint made by Dr. Perry. The trainers were Dr. Hilary Writer, Dr. James Chan and Dr. Anna-Theresa Lobos.

225. During the Conflict Resolution Course, the plaintiff explained what had happened during the emergency room consult with Dr. Perry. The other participants were shocked at what had happened. Dr. Writer, one of the trainers, was not in the room with the plaintiff during most of the session except for very short periods of time as she was circulating amongst the groups. As the course finished, Dr. James Chan stopped the plaintiff and told her that what had happened to her was unacceptable and she should go to a higher authority about it.

226. The defendant Rubens continued to write defamatory memos alleging that the plaintiff had “no insight” as she refused to accept her fault in the Dr. Perry incident. He wrote to Bragg on February 21, 2009 (a document which only came to the plaintiff’s knowledge in 2011 when it was released under a Freedom of Information request to the University):

As you can deem from her email, she still doesn't feel the conflict she had in the Emergency is her fault; when this occurred, I had the staff surgeon at the time and the Emergency doc discuss the case and they concluded that she had behaved unprofessionally. The REC decided she should take a conflict resolution course.

227. On April 4, 2009, in furtherance of the conspiracy between Bragg and Rubens, the defendant Rubens wrote to Bragg that he had spoken to Dr. Hilary Writer and she “confirmed” that an incident with the plaintiff had taken place at the Conflict Resolution Course. Writer was willing to give them something on paper but Rubens had “asked her to wait and perhaps talk to you and pamela to determine exactly ‘what’ to put on paper.” Rubens wrote that Writer felt the plaintiff had “no insight” into why she was attending the course. The “pamela” referred to in Rubens’ email was Pamela A. Harrod, the Secretary of the University of Ottawa and a lawyer.

228. In furtherance of the conspiracy, Bragg and Rubens agreed that the results of the plaintiff’s rotations on her ITERS (all of which she passed) would be deemed inadequate evidence in determining her competency. In furtherance of the conspiracy, in April 15, 2009, the defendant Rubens informed the plaintiff that the RPC had “serious concerns

with respect to your academic and professional standing.” The RPC had been given information about the “current allegations of professional misconduct” and an “investigation” was also being made (by Bragg) into a “report” from the supervisor of the Conflict Resolution Course (Dr. Writer) about her lack of “insight.” The plaintiff was told she would be monitored through oral and written exams. On May 6, 2009, the plaintiff’s lawyer demanded disclosure for the documents mentioned in Rubens’ letter of April 15, 2009 but no disclosure was made as the defendants Bragg and Rubens had no intention of allowing the plaintiff to defend against the allegations.

229. The plaintiff, not understanding why this was happening, refused through her lawyer to comply with these demands and filed an appeal. The plaintiff had failed none of her rotations and the demands by Rubens, which he influenced the RPC to adopt, amounted to differential and excessive monitoring and treatment not accorded to other residents, contrary to the Evaluation Policy.

230. In furtherance of the conspiracy, on April 23, 2009, the defendant Bragg asked Dr. Writer to describe the plaintiff’s behavior at the January Conflict Resolution Course. Writer wrote back that the plaintiff was “interactive and vocal” and that during the didactic part of the workshop the plaintiff had made the facilitators “uncomfortable” as she was “somewhat argumentative and challenging” and required them to demonstrate their own conflict resolution skills. She admitted she was remembering something from several months before.

231. Dr. Writer had originally made no complaint against the plaintiff and she wrote only after the defendant Bragg invited this response and only after Rubens had asked her to “wait” to be told what to write.

232. In furtherance of the conspiracy, Bragg and Rubens did not disclose Writer’s report to Alsaigh and did not provide her with any opportunity to give her side of the story. No impartial, fair, objective and transparent investigation was done of this alleged unprofessional conduct, contrary to the Evaluation Policy. The plaintiff never saw Writer’s email until she appealed that decision some months later. She was denied due

process, procedural fairness and natural justice as required by the Evaluation Policy and the “General Standards of Accreditation.”

233. On February 25, 2009, the plaintiff requested the defendant Bragg’s administration offices at Postgraduate Medical Education, to draw up a letter confirming she was a student at the University. She followed up with an email on February 28, 2009, adding a request for copies of her contracts with the University which she asked to be ready on March 2, 2009.

234. The Administrative Assistant, Diane Letourneau, replied by email that they could not release the letter until she had paid an outstanding account for a replacement Identification card. The plaintiff and Letourneau exchanged some emails on March 2, 2009 in which the plaintiff expressed a normal person’s frustration with the bureaucracy’s inability to handle cash which the plaintiff had attempted to pay at the time she obtained the replacement card some months before.

235. On the same day, March 2, 2009, the plaintiff attended at the Postgraduate Education Office to pick up the copies of her contracts which she had also requested by email on February 28, 2009 and also with a reminder email that morning. The contracts had never been copied even though the plaintiff had given several days notice. She was treated rudely told brusquely to come back later but the plaintiff insisted that she needed the contracts and would wait. She was polite and respectful. Finally, an employee photocopied the contracts and gave them to her and she left.

236. Two days later, on March 4, 2009, one of the assistants in the Postgraduate Office, Julie Jodoulin, emailed a formal complaint to Bragg about the plaintiff, alleging the plaintiff was angry and “ready for a fight” the day she had come into the office and had sent emails insulting to the staff. The defendant Bragg was Jodoulin’s supervisor. The complaint made false allegations against the plaintiff and was an untrue account of what had happened.

237. The plaintiff was not informed of this complaint until she received a letter dated April 6, 2009 from the defendant Rubens informing her that a formal complaint had been brought

to the defendant Bragg from the administrative employees at the Postgraduate Office alleging unprofessional conduct on her part which raised a “serious issue.”

238. On April 23, 2009, the plaintiff Alsaigh, through her lawyer, filed a Grievance with the defendant Dean Jacques Bradwejn to address the ongoing intimidation, harassment, discrimination and bias in the Program including its officers such as Bragg and Rubens. However, the defendant University never proceeded with the Grievance, and instead vigorously challenged her procedural rights. The Grievance went nowhere. Her lawyer also complained to the Royal College about her treatment but it could not intervene so long as an appeal process was in place.

239. On April 30, 2009, a nurse complained that the plaintiff had removed a patient’s dressing and palpated a wound with her bare hands, causing pain. The plaintiff never touched the wound with her bare hands and she apologized to the patient for causing some pain. The plaintiff’s examination revealed what appeared to be a serious infection and she prescribed antibiotics which probably saved the patient’s leg. Two residents with the plaintiff were also shocked at the inflammation and swelling around the wound. There was never any investigation of this except that Dr. Jetty, the patient’s surgeon, spoke to her about it. This incident was never mentioned in the plaintiff’s ITER. But this incident was used in furtherance of the conspiracy by the defendants Bragg and Rubens later as a basis for alleging that the plaintiff had psychiatric medical problems requiring “treatment.”

240. In furtherance of the conspiracy, the defendants Rubens and Bragg initially denied the plaintiff any right to have a lawyer with her at the meeting regarding the Postgraduate Medical Education staff complaints but the plaintiff stated she must have the right to a lawyer given the “false accusations” against her. Rubens was angry that the plaintiff had cancelled a meeting in order to get a PAIRO representative to attend. He emailed Bragg on April 9, 2009 that “we should proceed as planned with regards to physician wellness and force her.” This email was disclosed to the plaintiff in 2011 under a Freedom of Information request made to the University. The disclosed documents, including the April

9, 2009 email, provided the evidence that the defendants Bragg and Rubens had conspired against her, which knowledge she did not have until the disclosure of these documents.

241. Bragg wrote her on April 14, 2009 that “the discussion of your disruptive behavior incident is not a legal proceeding...” indicating he had already made up his mind about the complaint. Eventually, however, it was agreed she could bring her lawyer but he was not allowed to speak to the issue.
242. The meeting took place on May 27, 2009. The plaintiff explained what happened but her explanation was rejected by the defendant Bragg who was hostile and had already made up his mind that the plaintiff was “disruptive.” He said he had worked with Jodoulin for years and never had a complaint about her.
243. Pursuant to the conspiracy, on May 28, 2009, the defendant Rubens wrote to the plaintiff to tell her that he and Bragg had determined that she had committed a “significant breach of professional conduct” by her interaction with Jodoulin and that she was to contact the Physician Wellness program at the University to undergo “a formal assessment.” The plaintiff’s lawyer replied that she did not accept this finding since the Grievance she had filed in April had formal complaints against both Rubens and Bragg and they were not impartial. Her lawyer requested that an independent third party be appointed to investigate the complaints by Bragg’s office staff. No reply was ever given to this request as Bragg and Rubens intended to use their finding of unprofessional conduct to injure the plaintiff.
244. The alleged incident with Bragg’s office staff did not constitute unprofessional conduct. The matter took place completely outside a professional medical or clinical setting and the plaintiff did nothing which amounted to the very serious accusation of unprofessionalism.
245. In furtherance of the conspiracy, Rubens wrote Dr. Derek Puddester of the Physician Wellness Centre on June 1, 2009 (copied to Bragg), stating “we” want to “refer” the plaintiff to him for an “evaluation” as “we” were concerned she had several complaints of professional misconduct lodged against her and seemed to lack “insight”. Rubens attached copies of documents relating to the complaint by Dr. Perry, the complaint by the administrative staff at Postgraduate Medical Education offices, and the complaint by a

patient on the Vascular Surgery service. Rubens asked for an opinion, *inter alia*, on whether the plaintiff had a “medical problem”, whether it was “treatable” and what the plan for “treatment” would be.

246. Rubens’ letter to Dr. Puddester was defamatory and a violation of the confidentiality of the plaintiff’s private information regarding complaints made against her. The letter was not authorized or consented to by the plaintiff. Rubens was not her treating physician, was not a psychiatrist but a cardiac surgeon and had no authority as Program Director to “refer” her to Dr. Puddester for a psychological evaluation for advice on “treatment” for the plaintiff.

247. On June 16, 2009, emergency paged the plaintiff repeatedly but she did not answer. They called Dr. Brandys who used the overhead hospital paging system to call the plaintiff who came immediately from where she was working in the ICU. She had been carrying two pagers in an effort to avoid any problems with missing calls. She had inadvertently left one of the pagers in emergency when she left to work in ICU. This was the pager that the Communications Centre had kept calling even though they had been notified by the plaintiff that she had two pagers with her. They did not call her on the second pager nor did they call her on the overhead hospital intercom. This incident was used against her to deny her promotion to PDY-4 and to allege professional misconduct which required psychiatric treatment.

248. Dr. Brandys told her that since this was the second paging incident he was going to report her to Rubens. The first incident occurred on May 28, 2009 but Brandys had been notified by the Communication Centre on June 2, 2009 that the plaintiff’s pager was not working that day and in fact there had been a paging system failure for about 4 days.

249. On June 29, 2009, the so-called Resident Education Committee of Cardiac Surgery refused to promote the plaintiff to PGY-4, even though she had passed all of her rotations. It required her to do 6 months of remediation at the PGY-3 level, the result which Bragg and Rubens had initially wanted with the February, 2009 contract the plaintiff had refused to sign. Significant grounds for this decision were the paging incidents and the allegations of unprofessionalism made by Bragg’s office staff and the “report” solicited by Rubens

and Bragg from Dr. Writer. The decision required her to attend the Physician Wellness Program for an assessment. In furtherance of the conspiracy, Rubens wrote to Dr. Puddester that day to inform him that this time the plaintiff was required to attend for an assessment and “perhaps treatment.”

250. The plaintiff refused to attend the Physician Wellness Program since she had already accessed the Program through Monique Beaulne who had referred her to an attending psychiatrist in 2005. The plaintiff was always on follow up. It was this psychiatrist from the Ottawa General Hospital who had certified that the plaintiff was fit to practice.
251. The plaintiff appealed the imposition of remediation, but the University failed to schedule the appeals within the time limits set out in the Appeal Mechanism. The plaintiff’s lawyer was forced to write letters to the University secretary demanding that dates be set.
252. Days after filing her appeal from the imposition of remediation, the defendant Rubens removed the plaintiff from a Pediatric Cardiac Surgery rotation on July 27, 2009, contrary to the decision of the Resident Education Committee, and placed her in a General Surgery rotation even though she had already completed more General Surgery rotations than were required by the Royal College requirements. The plaintiff informed the Program through her lawyer that she refused the transfer and remained ready and willing to continue the Pediatric Cardiac Surgery rotation which was scheduled to end on December 14, 2009.
253. The defendant Rubens made no reply. As a result, the plaintiff Alsaigh received no training. Instead, the defendant Rubens contacted the Postgraduate Office who contacted the plaintiff’s financial sponsor, the Saudi Cultural attaché, to advise them she had failed to report from and after July 27, 2009, intentionally misleading the sponsor by failing to inform them of her appeal and her stated willingness to continue in the Pediatric Cardiac Surgery rotation. The defendant Rubens maliciously intended to prejudice the plaintiff with her financial sponsor in order to induce them to cut her funding.
254. Rubens dismissed the plaintiff from an academic day on Sept 16, 2009 for no good reason in a manner that was embarrassing and condescending to her. Despite her request

to remain in the session to learn as much as she could, she was required to leave. The plaintiff Khalid Aba-Alkhail was also dismissed by Rubens at the same lecture unfairly.

255. When Alsaigh could not present at an academic day on October 7, 2009, Rubens sent her an email, accusing her of being unfair to other residents and unreliable, even though she had given notice of her illness as soon as she could.

256. On December 15, 2009, the plaintiff Alsaigh attended for her training in Thoracic Surgery pursuant to the Cardiac Surgery Schedule. Upon arrival, she was not allowed to train and was advised by email that the defendant Rubens had ordered that all of her training was to be put “on hold” until she completed her remediation, even though this was under appeal. In furtherance of the conspiracy, the defendant Bragg supported Rubens’ decision and refused to allow her to continue any rotations pending determination of her appeal.

257. As a result of the concerted actions of defendant Rubens and Bragg, the plaintiff has not trained at the Program since July of 2009, except for three months in 2010 as her appeal from the imposition of remediation has continued through the internal processes of the defendant University and judicial review.

258. In furtherance of the conspiracy, the plaintiff Alsaigh will not be allowed into remediation by the defendants Bragg and Rubens unless she admits herself into a monitoring program to deal with her “professionalism” issues, specifically, at the OMA/ Physician Workplace Support Program in Toronto, a program that carries a stigma as it is used primarily with doctors with drug, alcohol or serious psychological problems. This is contrary to the decisions of the internal University appeal committees which heard the plaintiff’s appeals which only recommended but did not require the plaintiff to attend such assessments.

259. The defendant Rubens informed the plaintiff in May of 2010 that “the REC has mandated that she enter the Physician Wellness Program both before starting these rotations and before being placed in any position of responsibility (such as on-call) to protect patient safety and quality of care.” The plaintiff has never been disclosed the minutes or decision

of the REC that allegedly made this decision, notwithstanding numerous demands for disclosure of all relevant documents by her lawyer.

260. In reply, the plaintiff's psychiatrist certified to the defendant Bragg in June of 2010 that the plaintiff was not suffering any Major Depressive Disorder or any other Axis I psychiatric disorder that could interfere directly with her clinical duties. Therefore there was no psychiatric contra-indication for her to resume clinical duties. In furtherance of the conspiracy, the defendant Bragg replied that the plaintiff was being referred to the OMA PWSP because of "lapses in professionalism" that required remediation. His reply showed malice and bad faith as the opinion of the plaintiff's treating psychiatrist showed the plaintiff was mentally healthy and required no treatment.

261. The plaintiff was denied the right by the defendant Rubens, allegedly speaking on behalf of the REC, to take rotations anywhere outside Ottawa because of her "professionalism" issues. Rubens never disclosed any decision or minutes of this alleged decision of the Resident Education Committee and it is doubtful such decision was ever taken.

262. In furtherance of the conspiracy, in June of 2010, the defendant Bragg suggested that the plaintiff take anger management and a program of 3rd party 360 survey monitoring around professionalism issues. Bragg's requirements have increased as time goes on and have become more and more disproportionate to the original allegations of unprofessionalism which were made without any real investigations, procedural fairness or due process to the plaintiff.

263. The proposed remediation plan given to the plaintiff required her to take the Principles of Surgery examination of the Royal College and to disclose her results to the Program. The POS has no relation to the Program and is taken by medical residents at a time of their own choosing. The resident has the right to keep the results private. In the event of failure, residents have the right to retest. This requirement by Bragg and Rubens is a malicious violation of the plaintiff's rights as a medical resident, intended to put severe pressure on the plaintiff.

264. The plaintiff lost her appeals from the refusal to the Resident Education Committee to promote her to PGY-4, but no appeal committee ever required the plaintiff to undergo a psychological assessment as part of remediation.
265. The imposition of the condition of undergoing psychological assessment in both the remediation plan and the refusal to allow her to continue training in rotations requiring on call responsibilities was made by Bragg and Rubens without any authority or jurisdiction by Resident Education Committee, if such ever did make the decision.
266. The plaintiff Alsaigh continues to suffer the result of the abusive and discriminatory treatment of her by the defendant University, Mesana, Bragg and Rubens. Even though she successfully passed all of her rotations, she has been denied her promotion to PGY-4 and been denied the right to train. The defendants' actions have caused a loss of reputation in her field and severely damaged her prospects for advancement.

Conspiracy to Injure

267. The plaintiff Alsaigh states that the defendants Bragg and Rubens conspired to injure her as pleaded and particularized above. The plaintiff states that the conspiracy between the defendants arose after the plaintiff refused to sign the new standard contract sent to her on February 12, 2009, which provided that she would be forced to repeat her entire PGY-3 again and would not be eligible for promotion to PGY-4 until January 12, 2010. The plaintiff states that the defendants engaged and participated in a common design, the dominant purpose of which was to cause injury, humiliation, mental suffering and aggravation to the plaintiff.
268. The plaintiff states the defendants committed the overt acts set out in the paragraphs 220 to 267 above, using allegations where she was denied all rights of procedural fairness and due process, as a pretext or excuse for disproportionate allegations of unprofessional conduct and causing injury to the plaintiff and that their actions throughout had no legitimate object, and indeed had the dominant purpose of causing injury to the plaintiff. These unjust allegations of unprofessionalism were relied upon to deny her promotion to

PGY-4, to place her into remediation and to deny her any training involving on-call duties.

269. The defendants Rubens and Bragg conspired to create ongoing grievances and complaints over minor incidents which they exaggerated with the specific intent to cause the plaintiff Alsaigh humiliation, depression, frustration and mental suffering to drive her to mental illness. Mesana's conduct was consistent with the conduct of Bragg and Rubens creating an unbearably hostile work environment.

270. The facts establishing the conspiracy and the malice and motive of the defendants only came to the knowledge of the plaintiff in 2011 when she obtained documents under a Freedom of Information request to the University that showed that the defendants' actions in concert to injure her. The defendants named herein took advantage of and relied upon the depression and anxiety that their own unlawful actions precipitated.

271. As a result of the aforementioned conspiracy by the defendants the plaintiff has suffered damage including, but not limited to, being treated in a differential manner from other residents, her placement into remediation and non-promotion, loss of reputation, humiliation, and mental distress, shock, anxiety and loss of training time and income.

Misfeasance in Public Office

272. The defendants Mesana, Bragg and Rubens and each of them are liable for damages to the plaintiff Alsaigh for exercising their powers as public officers for an improper purpose, intentionally in a manner that exceeded their authority, and/or recklessly disregarding whether they had such power and knowing that their actions would injure the plaintiff, and /or were done recklessly or with willful blindness to the possibility of such injury, as follows:

- (a) Rubens treated the plaintiff in a demeaning, abusive manner and prevented her from obtaining the training she had contracted for by telling her not to ask questions and to just do as she was told, contrary to the Evaluation Policy and the "General Standards of Accreditation";

- (b) Mesana subjected the plaintiff to harsh, demeaning, threatening and intimidating treatment which shattered her confidence;
- (c) Rubens threatened to terminate the plaintiff's residency because of pager mishaps which in most instances were caused by pager system malfunctions and where the plaintiff did not intentionally fail to answer the pagers, subjecting her to abuse and intimidation contrary to the "General Standards of Accreditation" ;
- (d) Rubens abused and intimidated the plaintiff into signing a contract which gave the Program the right to terminate her residency immediately in case of any behaviour that jeopardized patient safety and telling her she would have no rights of appeal, no lawyer and no PAIRO, a denial of the plaintiff's rights under the Evaluation Policy, the "General Standards of Accreditation" and her contract with the University, which caused the plaintiff severe stress and anxiety. No other resident that she knew of was subjected to such extreme denial of rights;
- (e) Rubens refused the plaintiff the right to answer the allegations of unprofessional conduct by Dr. Jeff Perry in 2007 in a meeting with all parties present, thus denying her natural justice and due process concerning a serious accusation against her, contrary to the Evaluation Policy and procedural fairness;
- (f) Rubens subsequently maliciously used the Dr. Perry complaint to defame the plaintiff to other members of the Division as being a person guilty of unprofessional conduct, who had no "insight" into her behaviour and failed to accept responsibility for her actions;
- (g) Rubens repeated these defamatory and untrue statements to other surgeons to convince them she should not be allowed to take rotations outside of Ottawa because she was only trying to avoid Dr. Perry, even though the plaintiff had told him that was untrue, thus denying the plaintiff the opportunity to take specialized rotations in other centres, unlike other residents;

- (h) Rubens forced the plaintiff to take a Conflict Resolution Course because of the Dr. Perry incident after he had denied her rights to natural justice or due process and the ability to confront her accuser and give her side of the story;
- (i) Rubens failed the plaintiff on a Research Enrichment rotation in 2008 but was forced to admit on appeal that the rotation had to be considered a pass because of his failure to follow the Evaluation Policy;
- (j) Rubens deceived the plaintiff by telling her that he was denying her application to do some rotations outside Ottawa because “of concerns with your academic progress” when in fact he was privately telling members of the Division that it was because she was trying to avoid Dr. Perry;
- (k) Rubens denied the plaintiff’s application to do pediatric cardiac surgery rotations in Edmonton for the false reason that she only wanted to avoid Dr. Perry when in fact she wanted to specialize in that area and work in Edmonton which had an excellent program in that specialty;
- (l) Rubens defamed the plaintiff repeatedly in emails to the defendant Bragg by stating that the plaintiff had acted unprofessionally in the Dr. Perry incident and had no “insight” into why she was forced to take a Conflict Resolution Course;
- (m) Rubens and Bragg actively solicited and directed evidence against the plaintiff from Dr. Writer from the Conflict Resolution Course months after it had been completed in order to use it against the plaintiff as evidence of professional misconduct even though Dr. Writer had made no complaint about the plaintiff at the time;
- (n) Rubens and Bragg maliciously failed to disclose the Dr. Writer report to the plaintiff or to give the plaintiff any right to be heard concerning what happened at the Conflict Resolution Course prior to using it against her at a meeting of the REC to place her into remediation, thus denying the plaintiff due process and natural justice, contrary to the Evaluation Policy and “General Standards of Accreditation”;

- (o) Rubens failed to inform the plaintiff for over a month of the complaints against her by Bragg's office staff, then investigated the complaint with Bragg even though both were by that time the subject of a Grievance filed by the plaintiff, thus raising a reasonable apprehension of bias and denying Alsaigh procedural fairness and natural justice, contrary to the Evaluation Policy;
- (p) Rubens planned with Bragg to "force" the plaintiff into a physician wellness program even before he and Bragg had heard the plaintiff's version of events with Bragg's office staff, acting in bad faith and contrary to the Evaluation Policy;
- (q) Bragg and Rubens made a finding, in contravention of due process and natural justice, that the plaintiff had committed "a significant breach of professional conduct" with Bragg's office staff and was required to undergo a "formal assessment" with the Physician Wellness Program;
- (r) Rubens wrote a defamatory letter to Dr. Puddester attempting to "refer" the plaintiff for psychiatric assessment and/or treatment when Rubens was not her treating physician and had no authority as Program Director to do so. The letter breached the confidentiality of the plaintiff's private information;
- (s) Bragg and Rubens refused to accept the psychiatric assessments of both the plaintiff's treating psychiatrist and a second psychiatrist who was asked to provide an independent opinion who had both found her fit to practice medicine; the constant demands for proof of her mental fitness severely stressed the plaintiff and caused anxiety and fear, as they were intended to by Bragg and Rubens;
- (t) Bragg and Rubens refused to allow the plaintiff to train in regular rotations (having on call duties) after she appealed her placement into remediation until she had attended for a psychiatric or "wellness" assessment, even after decisions made on the plaintiff's appeal established that she was not required to do so;
- (u) Rubens made it a condition of the plaintiff's remediation in concert with Bragg that she attend a physician workplace program used primarily for doctors with drug or

alcohol problems, an attempt to stigmatize the plaintiff and to cause her to doubt her own mental health;

- (v) The defendants Mesana, Bragg and Rubens used the extensive powers of their public offices over medical residents in a malicious, biased, prejudicial manner against the plaintiff, contrary to their duties to evaluate the plaintiff in a “transparent, objective, impartial and fair” manner and to act in good faith pursuant to ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* and the Evaluation Policy;
- (w) The defendants Mesana, Bragg and Rubens perpetrated and allowed the creation of a poisoned work environment permeated with racism against Arabic nationals, including Alsaigh, such that she did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
- (x) The defendants Bragg and Rubens intentionally exercised their powers as public officers over the plaintiff’s training and evaluation in a manner that did not assist her to succeed but rather for the improper and malicious motive of ensuring she would not succeed as a medical resident, thereby injuring her.
- (y) Such further and other acts of misfeasance as public officers as may be established by the evidence at trial.

273. As consequence of the defendants’ misfeasance, the plaintiff Alsaigh has suffered damages, including but not limited to loss of income, humiliation, depression, anxiety and loss of time and training and further damages as particularized below.

Breach of Fiduciary Duty

274. The defendants Mesana, Bragg and Rubens are liable in damages to the plaintiff Alsaigh for breach of their fiduciary duty to her in respect of the same conduct particularized in paragraphs 272 for which she has suffered irreparable damage.

275. As Program Director, Rubens had a particular fiduciary duty pursuant to the standard contract signed with Alsaigh to act as a fiduciary which he breached. The plaintiff suffered damages as a result of this breach as particularized below.

Negligence and Breach of Contract

276. In the alternative, the plaintiff Alsaigh pleads that the defendants Mesana, Bragg and Rubens owed a duty of care to her to carry out their obligations with the skill, judgment, competence and diligence reasonably to be expected of ordinarily competent academic professionals and medical residency program administrators. The defendants breached their duty of care to the plaintiff and performed their functions negligently and in breach of contract, the particulars of which include but are not limited to the following:

- (a) Rubens treated the plaintiff in a demeaning manner and prevented her from obtaining the training she had contracted for by telling her not to ask questions and to just do as she was told;
- (b) Rubens threatened to terminate the plaintiff's residency because of pager mishaps which in most instances were caused by pager system malfunctions and where the plaintiff did not intentionally fail to answer the pagers;
- (c) Rubens forced the plaintiff to sign a contract through intimidation which gave the Program the right to terminate her residency immediately in case of any behaviour that jeopardized patient safety and telling her she would have no rights of appeal, no lawyer and no PAIRO, a denial of the plaintiff's rights under the Evaluation Policy and her contract with the University, which caused the plaintiff severe stress and anxiety. No other resident that she knew of was subject to such extreme denial of rights;
- (d) Rubens refused the plaintiff the right to answer the allegations of unprofessional conduct by Dr. Jeff Perry in 2007 in a meeting with all parties present, thus denying her natural justice and due process concerning a serious accusation against her, contrary to the Evaluation Policy and procedural fairness;

- (e) Rubens subsequently maliciously used the Dr. Perry complaint to defame the plaintiff to other members of the Division as being a person guilty of unprofessional conduct, who had no “insight” into her behaviour and failed to accept responsibility for her actions;
- (f) Rubens repeated these defamatory and untrue statements to other surgeons to convince them she should not be allowed to take rotations outside of Ottawa because she was only trying to avoid Dr. Perry, even though the plaintiff had told him that was untrue, thus denying the plaintiff the opportunity to take specialized rotations in other centres, unlike other residents;
- (g) Rubens forced the plaintiff to take a Conflict Resolution Course because of the Dr. Perry incident after he had denied her rights to natural justice or due process and the ability to confront her accuser and give her side of the story;
- (h) Rubens failed the plaintiff on a Research Enrichment rotation in 2008 but was forced to admit on appeal that the rotation had to be considered a pass because of his failure to follow the Evaluation Policy;
- (i) Rubens deceived the plaintiff by telling her that he was denying her application to do some rotations outside Ottawa because “of concerns with your academic progress” when in fact he was privately telling members of the Division that it was because she was trying to avoid Dr. Perry;
- (j) Rubens denied the plaintiff’s application to do pediatric cardiac surgery rotations in Edmonton for the false reason that she only wanted to avoid Dr. Perry when in fact she wanted to specialize in that area and work in Edmonton which had an excellent program in that specialty;
- (k) Rubens defamed the plaintiff repeatedly in emails to the defendant Bragg by stating that the plaintiff had acted unprofessionally in the Dr. Perry incident and had no “insight” into why she was forced to take a Conflict Resolution Course;

- (l) Rubens and Bragg actively solicited evidence against the plaintiff from Dr. Writer from the Conflict Resolution Course months after it had been completed in order to use it against the plaintiff as further evidence of professional misconduct even though Dr. Writer had made no complaint about the plaintiff at the time;
- (m) Rubens and Bragg maliciously failed to disclose the Dr. Writer report to the plaintiff or to give the plaintiff any right to be heard concerning what happened at the Conflict Resolution Course prior to using it against her at a meeting of the REC to place her into remediation, thus denying the plaintiff due process and natural justice, and contrary to the Evaluation Policy and “General Standards of Accreditation”;
- (n) Rubens failed to inform the plaintiff for over a month of complaints against her by Bragg’s office staff, then investigated the complaint with Bragg even though both were by that time the subject of a Grievance filed by the plaintiff, thus raising a reasonable apprehension of bias and denying her procedural fairness and natural justice, contrary to the Evaluation Policy;
- (o) Rubens planned with Bragg to “force” the plaintiff into a physician wellness program even before he and Bragg had heard the plaintiff’s version of events with Bragg’s office staff, acting in bad faith and contrary to the Evaluation Policy;
- (p) Bragg and Rubens made a finding, in contravention of due process and natural justice, that the plaintiff had committed “a significant breach of professional conduct” with Bragg’s office staff and was required to undergo a “formal assessment” with the Physician Wellness Program;
- (q) Rubens wrote a defamatory letter to Dr. Puddester attempting to “refer” the plaintiff for psychiatric assessment and/or treatment when Rubens was not her treating physician and had no authority as Program Director to do so. The letter breached the confidentiality of the plaintiff’s private information;
- (r) Bragg and Rubens refused to accept the psychiatric assessments of both the plaintiff’s treating psychiatrist and a second psychiatrist who was asked to provide an independent opinion who had both found her fit to practice medicine; the constant

demands for proof of her mental fitness severely stressed the plaintiff and caused anxiety and fear, as they were intended to by Bragg and Rubens;

- (s) Bragg and Rubens refused to allow the plaintiff to train in regular rotations (having on call duties) after she appealed her placement into remediation until she had attended for a psychiatric or “wellness” assessment, even after decisions made on the plaintiff’s appeal established that she was not required to do so;
- (t) Rubens made it a condition of the plaintiff’s remediation in concert with Bragg that she attend a physician workplace program used primarily for doctors with drug or alcohol problems, an attempt to stigmatize the plaintiff and to cause her to doubt her own mental health;
- (u) The defendants Mesana, Bragg and Rubens negligently perpetrated and allowed the creation of a poisoned work environment permeated with discrimination against Arabic nationals, including Alsaigh, such that she did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
- (v) The defendants Bragg and Mesana breached their duty to the plaintiff to ensure that the residents, including the plaintiff, were not subject to intimidation, abuse, or harassment in accordance with the “General Standards of Accreditation” and the University’s “Standards of Ethical and Professional Behaviour.”
- (w) Such further breaches of duty and contract as will be proven at trial.

277. The plaintiff says that the conduct of the defendants and each of them was in wanton and reckless disregard for the plaintiff’s rights, as a registered medical resident in the Cardiac Surgery Program, to be taught the specific objectives of Cardiac Surgery in a manner free from intimidation, discrimination and abuse and her rights to be evaluated fairly, based on her actual work in an environment where she was afforded equal opportunity as that of other residents.

278. The defendants caused damage to the plaintiff Alsaigh by their breach of duty and breach of contract including but not limited to loss of time, loss of reputation, humiliation, anxiety, depression, loss of self-esteem and loss of income. The damages suffered by the plaintiff were a direct and foreseeable consequence of the defendants' actions.

Defamation by the defendant Rubens

279. On or about January 15, 2008, the defendant Rubens falsely and maliciously published of and concerning the plaintiff Alsaigh, personally and in the way of her profession and calling, the following defamatory words:

“You are aware of the conflict that Manal had with an Emergency Room physician during the last few months. To address this conflict (in which a formal complaint was lodged by the physician against Manal for her behavior) I arranged for an interview between the attending staff who was responsible for Manal that day (Dr. Khanh Lam), and the Emergency Room physician. They discussed the incident and came to several conclusions. First, Manal was partially correct in that the consultation was premature. However both of the physicians agreed that her behavior was perhaps somewhat rude and that she could have handled the incident in a more polite and respectful manner. I had conferred with you regarding this incident and I subsequently met with Manal. I passed on the decision by those two physicians to her and the recommendations that she should work to address this aspect of her behavior, couching it in very positive terms. We recommended that she should take a conflict resolution course. Initially she agreed to this recommendation, but subsequently she has refused. [...]

It appears that Manal cannot get the conflict out of her mind and I believe it is jeopardizing her rotations. [...] A last-minute change to this alternative was not ideal but I sensed that she was suffering from a significant amount of anxiety with regards to the events of the last year, not the least of which related to the conflict with the Emergency Physician.

I have subsequently been informed that Manal is seeking to switch all of her non-cardiac Ottawa rotations to electives elsewhere in Canada so that she can avoid the Emergency Room at the Ottawa Hospital. This will include her subsequent rotations on Vascular Surgery, Thoracic Surgery and General Surgery; essentially it will involve at least 12 months of her remaining training. She is also requesting to complete her Pediatric Surgery (Congenital) rotation in Edmonton (6 months).

I discussed this situation with my Division this morning and they were very supportive of the extraordinary attempts we have made to accommodate this resident. I do not think it is healthy for her to be treated in this manner. In general the consensus was that if she is in

the Ottawa program she should be treated like all the other residents and the extraordinary alternatives that are being sought for this single conflict with this physician are inappropriate.

I recognize that she is still undergoing a great deal of stress but I don't believe it's necessarily helpful to her not to face these issues and seek help. I have not personally been impressed that she has insight into her behavior nor the decisions that she is making. She has not accepted responsibility for her behavior in this particular incident and she feels that the entire system is against her."

280. The said defamatory words were published by way of email to the defendant Bragg and other persons unknown. Alsaigh complains of and intends to rely on the entirety of the email published by the defendant in which these defamatory words appear.

281. Alsaigh states that the defamatory words, in their natural and ordinary meaning, and by innuendo, meant and were understood to mean, *inter alia*, the following, that:

- (a) She was obsessed with the incident with Dr. Perry and could not get it out of her mind such that it was jeopardizing her rotations and decision-making abilities;
- (b) She did not have insight into her behaviour or the decisions she was making;
- (c) She had not accepted responsibility for her rude behaviour in the Dr. Perry incident;
- (d) She was a paranoid individual, feeling the entire system was against her;
- (e) She required consultation with a psychiatrist and a conflict resolution course in order to gain insight into her responsibility for her behaviour with Dr. Perry;
- (f) She was so obsessed and unable to cope with the Dr. Perry incident that she was seeking to switch all of her non-cardiac Ottawa rotations to electives elsewhere in Canada so she could avoid the emergency room at the Ottawa Hospital in order to avoid Dr. Perry.

282. The defamatory words published by Rubens, and the innuendo arising from them, are false and were maliciously published by the defendant knowing that they were false or with careless disregard as to whether they were true or not.

283. Thereafter, and at a time and date unknown to the plaintiff but known to the defendant, the defendant Rubens spoke like words about the plaintiff Alsaigh to members of the Cardiac Surgery Division. The defendant Rubens maliciously spoke the words to the members of the Cardiac Surgery Division knowing that such information would be used by them in assessing the plaintiff and in deciding the course of her residency, including whether she should be allowed to do rotations outside Ottawa.

284. On or about February 21, 2009, the defendant Rubens falsely and maliciously published of and concerning the plaintiff Alsaigh, personally and in the way of her profession and calling, the following defamatory words:

“With regards to the electives – she was requesting these for virtually every rotation (vascular, thoracic etc.) and the motive was primarily so that she wouldn’t have to see the doctors in our Emergency room, as she still feels they are out to get her.

As you can deem from her email, she still doesn’t feel the conflict she had in the Emergency is her fault; when this occurred, I had the staff surgeon at the time and the Emergency doc discuss the case and they concluded that she had behaved unprofessionally. The REC decided she should take a conflict resolution course.” [...]

I do not think this resident has any insight whatsoever.”

285. The said defamatory words were published by way of email to the defendant Bragg and other persons unknown. Alsaigh complains of and intends to rely on the entirety of the email published by the defendant in which these defamatory words appear.

286. Alsaigh states that the defamatory words, in their natural and ordinary meaning, and by innuendo, meant and were understood to mean, inter alia, the following, that:

- (a) She had no insight whatsoever into her own behaviour;
- (b) She is paranoid, believing all the doctors in the Emergency room are out to get her;
- (c) She behaved unprofessionally in the incident with Dr. Perry;
- (d) She behaved unprofessional in the incident with Dr. Perry and still has not accepted her responsibility for her behaviour;

(e) Her paranoia and failure to take responsibility for her behaviour is leading her to demand all of her elective rotations be taken outside Ottawa.

287. As a result of the publication of the defamatory words, the plaintiff has been subjected to hatred and contempt and has suffered damages to her reputation personally and in the way of her profession and calling.

288. As a result of the defamatory words, and all repetitions and republication of them, the plaintiff has been injured in her feelings, in her personal and professional character and reputation, and in her profession and calling. The plaintiff has also suffered personal embarrassment and humiliation.

289. The plaintiff only learned of the emails containing the defamatory words and the slander by the defendant Rubens to the Cardiac Surgery Division in 2011 when the January 15, 2008 and the February 21, 2009 emails were disclosed to her pursuant to a request to the University under Freedom of Information.

290. As a result of the defamation, the plaintiff has suffered and will continue to suffer damages for which the defendant Rubens is liable.

Dr. Khalid Aba-Alkhail

291. The plaintiff Aba-Alkhail was offered a residency position with the Faculty of Medicine's Cardiac Surgery Program at the University by the defendant Rubens on or about March 14, 2006. The position was to commence July 1, 2006, for a duration of six years.

292. He was interviewed by Rubens, the Program Director, who advised him that while he was no longer accepting Saudi nationals as medical residents in the program, he would make an exception for Aba-Alkhail because he had graduated from a Canadian medical school, McMaster University, in Hamilton. He did not explain why Saudi nationals were generally undesirable. This indicated a bias against Saudi nationals.

293. The plaintiff signed a Letters of Intent confirming his intention to leave Canada and return to his country of origin upon completion of his residency training at the University. To the knowledge of the University and the defendants Bragg and Rubens, Aba-Alkhail had a contract with the King Faisal Hospital and Research Centre in Saudi Arabia to return there in 2012 to practice as a cardiac surgeon upon completion of his residency.
294. The standard contract was entered into between the University and Aba-Alkhail on April 13, 2006 and provided that Aba-Alkhail was accepted into the Program at the training level PGY-1 for a period of one year from July 1, 2006 to June 30, 2007, renewable annually upon successful completion of the year.
295. The plaintiff commenced his residency on July 1, 2006 but was never given any objectives for the rotation he was assigned to, nor was he provided with any academic training or teaching during July and August.
296. The defendants Rubens and Mesana both told Aba-Alkhail that he was doing very well in the first three months and he was led to understand that he was progressing at the same pace as his colleagues. The defendant Rubens in particular gave Aba-Alkhail positive oral feedback, with comments such as “It seems everyone is impressed here” and “I don’t know what you’re doing, but keep doing what you are doing.”
297. The plaintiff Aba-Alkhail states that within weeks of the beginning of his residency, however, the defendant Rubens decided that he did not want Aba-Alkhail in the Cardiac Surgery Program and thereafter used various methods not to help Aba-Alkhail remediate any alleged deficiencies in his knowledge but to remove him from the Program and thereby cause him damage, using such means as deception, unfair assessments, damaging his reputation with other program directors and doctors by comments insinuating he was incompetent and incapable of being a cardiac surgeon, as outlined hereinafter.
298. Aba-Alkhail’s first rotations were Cardiac Surgery (July 1 to Sept. 25, 2006), Emergency Medicine (September 26 to October 23, 2006), Cardiac Surgery Elective (October 24 to November 20, 2006) and Cardiac Surgery Intensive Care Unit (C.S.U.) (December 1 to

January 15, 2007). He failed the first two Cardiac Surgery rotations but passed the Emergency Rotation.

299. Prior to Sept. 23, 2006 the Program did not indicate to the plaintiff that his performance on the rotations was deficient, as was required by the evaluation policy of the University if such existed. The failure by the defendant Rubens to provide a mid unit evaluation and notice of deficiencies denied the plaintiff the opportunity to improve his alleged deficiencies.

300. Prior to Aba-Alkhail starting his Emergency Medicine rotation, Rubens wrote to his supervisor Dr. Brian Elder telling him that the plaintiff was “behind in his knowledge base” and that they had “concerns about his academic level” and urged Dr. Elder to “assess him carefully” and let Rubens know “if there were any problems.” The plaintiff Aba-Alkhail alleges that the defendant Rubens was intending to prejudice and accomplish a negative assessment to corroborate Rubens’ own assessment of the plaintiff. Aba-Alkhail nevertheless passed the rotation. Elder informed the defendant Rubens that “nobody felt he was below expectations.” These communications only came to the plaintiff’s knowledge in April 2011 through a Freedom of Information request to the University.

301. In or about December of 2006, Rubens informed Aba-Alkhail that he was disappointed in him because he thought that Aba-Alkhail was “not like the other Saudis” but that “unfortunately, you are like the other Saudis.”

302. In or about this time (December of 2006), the defendants Bragg and Rubens entered into an agreement to conspire against Aba-Alkhail, the predominant purpose of which was to injure Aba-Alkhail by removing him from the Program.

303. In the alternative, the conduct of the said defendants in agreeing to remove Aba-Alkhail from the Cardiac Surgery Program was unlawful, planned and deliberate, was directed towards Aba-Alkhail, and Bragg and Rubens knew or should have known in the circumstances that injury to Aba-Alkhail was likely to, and did, result, causing damage which they conspired one with the other to inflict on the plaintiff Aba-Alkhail.

304. The plaintiff suffered grievous injury and damages as a result of this conspiracy to injure, including depression, anxiety, loss of opportunity, loss of training, loss of income and other damages particularized below.

305. In furtherance of the conspiracy, on or about December 1, 2006, while on his CSU rotation, Rubens placed Aba-Alkhail on probation for the unusually short period of 6 weeks by the Program on the grounds that he had failed two rotations. Aba-Alkhail was given no opportunity for remediation but was immediately placed on the fast track to dismissal which was the intent of the defendant Rubens and Bragg.

306. In furtherance of the conspiracy, Rubens appointed himself as the plaintiff's probation/rotation supervisor as well as acting as the Program Director. This gave him control over Aba-Alkhail's probation. In furtherance of the conspiracy, Rubens emphasized to Aba-Alkhail that at any time during the probation he could leave for Saudi Arabia or try to switch out of the Program. Rubens told the plaintiff at a meeting even before the start of the probation period that he didn't think the plaintiff would be successful in his probation. These statements were calculated to discourage the plaintiff from remaining and to encourage him to leave.

307. The plaintiff states that the defendant Rubens appointed himself as both Program Director and Probation supervisor, an unusual arrangement, in order to ensure that Aba-Alkhail failed the probation and was dismissed, an outcome Rubens (with Bragg) had already decided, contrary to Rubens' duty as Program Director to act in good faith to help a medical resident succeed.

308. In furtherance of the conspiracy, on December 1, 2006 Bragg also met with Aba-Alkhail and told him there was a definite possibility of him failing and being asked to leave the program. Bragg told him he had various options, one of which was to return to Saudi Arabia. Bragg's statements, like Rubens, were intended to encourage Aba-Alkhail to leave voluntarily.

309. The plaintiff Aba-Alkhail informed the defendants Bragg and Rubens that he had no option to leave as he had a contractual obligation to King Faisal Hospital to continue in

Cardiac Surgery and that he was anxious to learn and to succeed in the Program. Mesana asked the plaintiff what would happen to him financially if he was dismissed. Aba-Alkhail told Mesana he would be liable to repay all the money and support he had received from 2002 to 2007 from the King Faisal Hospital if he failed, which would be devastating to him and his family. The Program therefore had knowledge of the consequences to the plaintiff of their actions.

310. In furtherance of the conspiracy, Bragg advised Rubens to make the probation of short duration in order to “expedite” the process of what amounted to the quick expulsion of the plaintiff. The plaintiff was denied any specific remedial goals or objectives which could demonstrate proficiency.

311. In furtherance of the conspiracy, in the middle of the probationary period, the defendant Rubens threatened Aba-Alkhail that he should transfer to another program out of Cardiac Surgery or he would be terminated. No extra teaching was given to Aba-Alkhail, nor did he receive the supervision required by the Probation contract. Rubens repeatedly gave him negative comments, saying “it would take a miracle for you to pass”, etc. At various time, the defendant Rubens give this message to all Saudi residents in the Cardiac Surgery program.

312. On December 19, 2006 the defendant Rubens unilaterally and without notice or hearing and secretly terminated Aba-Alkhail on form 4026A. The secret notice of dismissal was delivered to the plaintiff through a Freedom of Information request in the April of 2011.

313. On January 8, 2007, one week before the end of the contractual probation period, Rubens informed the plaintiff Aba-Alkhail that he had failed the probation and he was dismissed from the Program. Rubens was hostile, telling the plaintiff to hand in his badge, pager and lab coat that day or else hospital security would take it from him by January 15th. As a Saudi Arabian, the plaintiff was threatened and shocked by this event.

314. The decision to dismiss was made by the Cardiac Surgery Division and was based entirely on the oral information Rubens provided to them as no evaluations from

supervisors had been completed and Rubens failed to take any notes during his meetings with Aba-Alkhail as required by the probation contract. The Cardiac Surgery Division had no jurisdiction to dismiss the plaintiff as this was the sole jurisdiction of the RPC. This was the intentional result and injury to the plaintiff which the defendant Rubens desired to achieve for the purpose of maliciously humiliating, intimidating and discriminating against Aba-Alkhail and furthering the conspiracy.

315. In furtherance of the conspiracy, Rubens and Bragg contacted the Saudi Cultural Affairs attaché, Aba-Alkhail's financial sponsor, on or about January 2, 2007, and urged it to end their support for him and send him back to Saudi Arabia. This action was calculated to avoid any lawful appeal by Aba-Alkhail, prevent his continued funding by the Saudi government and to inflict damage to Aba-Alkhail's reputation with his financial sponsors. However, the Saudi attaché refused to cut Aba-Alkhail's funding.

316. Aba-Alkhail appealed his dismissal from the Cardiac Surgery Program.

317. Bragg was surprised that the plaintiff had "actually appealed" his probation failure and asked the Program administrator by email on May 16, 2007 to find "a couple of staff suckers" to sit on the appeal committee. This came to the knowledge of Aba-Alkhail in 2011 when he received documents under a Freedom of Information request to the University and this document was released.

318. Bragg allowed Aba-Alkhail to do further rotations during this period: Intensive Care Unit rotation (in or about January 16 to February 12, 2007) and General Surgery rotation (in or about March to April, 2007). Bragg told Aba-Alkhail that if he did well, Bragg would have written documents (the ITERS) to use against Rubens and Mesana to "stand up" for the plaintiff.

319. During these rotations, the plaintiff was able to sign orders like the other residents, a right the defendant Rubens had taken away from him in November of 2006 when he required the plaintiff to have a co-signer. The plaintiff worked independently from January to April of 2007 with no problems. (He worked some 21 months independently signing orders but

was told by Rubens in January of 2011 that he would have to co-sign again “in anticipation of a problem” in the future.)

320. He passed both rotations in the spring of 2007 and was deemed to meet or exceed expectations and in some instances to be “outstanding.” Written evaluation comments included:

“Excellent Resident”, “Fulfilled Responsibilities”, “Highly dedicated & motivated individual, he managed the team by himself for 2 weeks when team senior was away. His performance was excellent. He is working to be an excellent surgeon”

321. In spite of his previous promise to Aba-Alkhail to “stand up” for him if he did well, on April 9, 2007, the defendant Bragg suspended Aba-Alkhail from all clinical duties and he remained suspended until July 1, 2009. Bragg offered to help the plaintiff transfer out of Ottawa if he withdrew in writing. The plaintiff refused this offer when Bragg refused to put the transfer promise in writing. This was a period of over two years in which the plaintiff was out of training and unemployed. This was calculated to prevent the plaintiff Aba-Alkhail from pursuing his career.

322. The Appeal Sub-Committee of the Postgraduate Medical Education Committee (PGEC) met on July 27, 2007 to consider Aba-Alkhail’s appeal. The appeal was dismissed but it expressed grave concerns he had been denied the opportunity to have remediation and that the period of probation was too short given the time of year it was given over Christmas vacation.

323. The plaintiff’s lawyer protested various procedural irregularities in the process and by email dated October 3, 2007, legal counsel for the University informed Aba-Alkhail’s lawyer that in the circumstances, the University had decided to constitute a new appeal committee to determine the matter “de novo”. The failure of the University to follow proper procedures damaged Aba-Alkhail by delaying the appeal process significantly, causing him severe stress.

324. By decision dated December 18, 2007, the newly constituted Appeal Sub-Committee allowed the appeal, holding that the plaintiff should not and held:

“The Committee agreed that the evaluation policy was not adhered to since the decision to fail the resident on the first rotation did not adhere to the Evaluation Policy. Specific steps being a mid-rotation verbal feedback with signed documentation. As mentioned in a review of question 1 and question 4 there was not sufficient documentation of a review of learning objectives at the beginning of the rotation nor was there a clear mid-rotation formative feedback including written and signed documentation. For these reasons a failure on this first rotation is questionable. Since these calls into question the validity of the statement that “sequential failures” occurred, a decision to proceed directly to probation does not follow the Evaluation Policy” “Based on these finding it is the unanimous decision of the members of the Appeals Committee that the Cardiac Surgery Program did not follow due process as outlined in the Faculty of Medicine, University of Ottawa, Policies and Procedures for Evaluation of Postgraduate Trainees and as such recommends that the Resident Dr Aba-Alkhail be re-instated into the Program”

325. Rubens was angry at the recommendation and demanded of Bragg by email dated January 18, 2008 (first revealed to Aba-Alkahil in April of 2011 in a Freedom of Information disclosure) that there was no reason for the matter to be discussed at the full Postgraduate Medical Education Committee since “we’ve agreed to provide a 2 month probation for this fellow, though we don’t agree.” The defendant Bragg replied that there was “no choice” but to go via the Postgraduate Medical Education Committee.
326. By letter dated February 8, 2008, Rubens urged the Postgraduate Medical Education Committee not to accept the recommendation of the Appeal Sub-Committee and to dismiss Aba-Alkhail. The Appeal Sub-Committee is the body authorized to hear the evidence and make recommendations in its conclusions to the Postgraduate Medical Education Committee.
327. In furtherance of the conspiracy, at the meeting of the Postgraduate Medical Education Committee on February 27, 2008, Bragg acted as chair of the meeting and gave its members only 10 minutes to look at the extensive materials regarding the plaintiff’s appeal. Rubens attended the meeting without notification to the plaintiff who was not allowed to attend the meeting.
328. In furtherance of the conspiracy, Bragg told its members that they had to vote to approve or reverse the Appeal Sub-Committee’s recommendation of allowing the resident to be re-instated to the program “to repeat the probation.” This was a deliberate misrepresentation by Bragg to the Postgraduate Medical Education Committee whose members were relying

on his synopsis to understand what they were voting on. The Appeal Sub-Committee had in fact recommended reinstatement without a condition of probation. Bragg did this intentionally because probation was a necessary pre-condition to dismissal which Rubens and Bragg intended for the plaintiff. Bragg falsely and maliciously inserted this condition into the unconditional recommendation of the Appeal Sub-Committee which was for reinstatement without probation.

329. The Postgraduate Medical Education Committee, having been misled by Bragg, voted on the motion put before it that Aba-Alkhail be reinstated “for the purpose of repeating the probationary period.”

330. Bragg’s misrepresentations were intended to injure the plaintiff and did injure him by denying the plaintiff the very remedy which he had sought and been given by the Appeal Sub-Committee; Bragg severely damaged the plaintiff as he was forced either to appeal and be unable to resume residency or, instead, submit to probation under the very person who had already demanded his dismissal.

331. Aba-Alkhail appealed the imposition of probation. In furtherance of the conspiracy, when his lawyer requested that the Program disclose the Minutes of the February 27, 2008 meeting, Bragg or someone at his direction altered the original minutes to hide the fact that he had given the members only 10 minutes to look at materials and to hide the fact that he had misled the Appeal Subcommittee by adding the probation condition to the recommendations. The plaintiff’s lawyer subsequently obtained a copy of the unedited minutes for the appeal. The plaintiff discovered the altered minutes in April of 2011 when he obtained a copy through a Freedom of Information request. The altered minutes initially disclosed to the plaintiff’s lawyer demonstrated the calculated malice of defendant Bragg who, in furtherance of the conspiracy, attempted to hide how the probationary term came to be inserted in the decision of the Postgraduate Medical Education Committee (PGEC.) The defendant Bragg used his office at the meeting to influence the other members to accomplish that which he and the defendant Rubens had agreed to, a further period of probation as confirmed in the email of January 18 2008,

which email was disclosed to the plaintiff only in April of 2011 in the Freedom of Information disclosure. Bragg did this to hide his previous misrepresentation to the PGEC.

332. The plaintiff Aba-Alkhail's appeal was heard by the Faculty Council Committee; chaired by the defendant Dean Bradwejn, and on June 9, 2008, the Faculty Council allowed Aba-Alkhail's appeal and ordered that he be reinstated to the Cardiac Surgery program with the condition he be placed on a one year remediation program to provide him with the best opportunity for success by providing clear objectives and opportunities for improvement. Faculty Council directed that the plaintiff meet with "Cardiac Surgery to develop mutually agreeable conditions and timetable to facilitate his re-entry into the program."

333. Rubens angrily rejected this decision and privately communicated to Bragg that it was "unacceptable" that Aba-Alkhail return to Cardiac Surgery, that "we did not accept this", that "if he goes on 'remediation' it is 100% certain he will pass this and we will be forced to take him back. Is the dean [Bradwejn] going back on what he said?" This statement was contained in emails discovered in April of 2011 in documents released under a Freedom of Information request by the plaintiff to the University. The email shows the malice and bad faith of the defendant Rubens and his intent to remove the plaintiff from the Program regardless of his abilities or his evaluations.

334. In furtherance of the conspiracy, the said defendants Bragg and Rubens used the Faculty Council decision placing the plaintiff into remediation as an opportunity for delay and to impose arbitrary, unlawful conditions which Aba-Alkhail, failure of which would justify dismissal. This was contrary to the Evaluation Policy and the requirements for good faith on the part of the defendants.

335. After the appeal, Bragg instructed his administrators at the Postgraduate Office not to make appointments with Aba-Alkhail or his lawyer until after July 4th and to tell them he was "away" or "his schedule is full." The plaintiff only learned this fact after documents were released to him in 2011 under a Freedom of Information request.

336. Notwithstanding Aba-Alkhail's repeated efforts to meet with Rubens in the following months to reach a mutually agreeable remediation contract, it was not until the middle of

August, 2008 that Rubens sent a draft remediation contract to Aba-Alkhail, unilaterally imposing the terms. This was done with the knowledge and concurrence of the Defendant University of Ottawa, the defendant Bragg and the defendant Bradwejn who conspired to defeat the purposes of the Faculty Council recommendation and dismiss Aba-Alkhail. The plaintiff only learned these facts after documents were released to him in 2011 under a Freedom of Information request.

337. In furtherance of the conspiracy, Rubens insisted that as part of the remediation, Aba-Alkhail be forced to take and pass two qualifying examinations given by the Medical Council of Canada (the LMCC, Parts I and II) which Aba-Alkhail was not required to pass but doctors in Canada are required by Ontario government regulation to pass before they are allowed to practice independently in Canada. This was not part of Aba-Alkhail training requirements and was designed by the defendants Rubens and Bragg to be an obstacle to Aba-Alkhail which could justify failure of remediation and thus, dismissal. The plaintiff only learned these facts after documents were released to him in 2011 under a Freedom of Information request.

338. The LMCC qualifying examination is not a requirement of the CPSO in order to obtain a license to practice in a Postgraduate Medical Education residency. Nor was the LMCC qualifying examination required for admission to enter the Cardiac Surgery Program at the University, nor was there any requirement at any time by the Royal College that residents had to pass the exams during their residency in order to qualify to write the specialty examination. It was the certification of the Royal College which Aba-Alkhail was seeking and for which he was training to return to Saudi Arabia.

339. Rubens told Aba-Alkhail at a meeting on Sept. 24, 2008 that all of the residents would have to pass the LMCC qualifying exam in the future and that this was on the CaRMS website (CaRMS is the acronym for the Canadian Resident Matching Service, an organization that provides an application and matching service for medical doctors seeking entry into postgraduate medical training throughout Canada.) Aba-Alkhail checked the CaRMS website and saw the requirement there and believed that this was

something that all residents would have to do. This influenced him greatly in agreeing to this condition.

340. However, Rubens knew by Sept. 13, 2008 from the University administration that he would have to ask CaRMS to remove this requirement for legal reasons but never informed Aba-Alkhail, thus deceiving him. Rubens knew that the requirement to pass the LMCC could not lawfully be imposed on the plaintiff or any of the residents. He wrote in an email on September 13, 2008 to Diane Cyr, an administrator, that he wanted a policy that all trainees “must complete LMCC or equivalent. They don’t have to pass, but they have to take the exam.” Rubens’ statement showed that the requirement to make Aba-Alkhail pass the LMCC was an arbitrary requirement, unrelated to competencies required by the Cardiac Surgery program. No such policy has ever been enacted at the Program or Postgraduate Medical Education division. The plaintiff is the sole resident to have been required to write the LMCC qualifying examination. The Rubens’ email was evidence of actual malice on the part of Rubens and only became known by Aba-Alkhail in April, 2011, as a result of disclosure of these documents under his Freedom of Information request.

341. The imposition of the LMCC qualifying exam constituted a repudiation of the University’s duties and obligations under the contract with the plaintiff to provide training in an accredited postgraduate medical program. It was contrary to the provisions of the Evaluation Policy, which required that evaluation of remediation must be similar to all other residents and exams must be given by the Program itself or units within the University.

342. In furtherance of the conspiracy, Aba-Alkhail’s financial sponsor, the Saudi Cultural Bureau, was asked by Bragg or his associate or those under his control, to pay a substantial amount of money to pay for the plaintiff’s mentor during the remediation, a requirement imposed by Bragg and Rubens in furtherance of the conspiracy. Payment for a mentor by a resident was an unprecedented requirement. Rubens repeatedly communicated with Bragg to find out if the Saudis had agreed to fund Aba-Alkhail for the remediation year, which they did. Rubens was clearly seeking to defeat remediation by

demanding these monies as a condition of remediation. This was a further example of unnecessary and contrived obstacles for Aba-Alkhail which could force his removal from the Program.

343. The plaintiff was forced to find a surgeon from outside the Cardiac Surgery Program to be his mentor, a difficult task because he had been at the Faculty such a short time before being dismissed.

344. During the lengthy negotiations regarding the terms of the remediation contract, the plaintiff requested that the contract direct him specifically to the chapters of books he would be expected to read. Privately, Rubens contemptuously told Bragg that the plaintiff “should read from page one to the index in every book he can get his hand on.” This was a further example of a non-specific demand designed as part of the conspiracy to obstruct defeat and frustrates any attempt by Aba-Alkhail to comply and satisfy the remediation requirements and was part of the conspiracy to injure Aba-Alkhail.

345. Rubens told Bragg that he had discussed Aba-Alkhail with the Cardiac Surgery division and they “will not consider taking him back until he’s finished a full remediation and both parts of the Imcc.” This was contrary to the express direction of the appeal body, the Faculty Council, thus thwarting the remediation. Rubens used his position as Program Director to maliciously damage the plaintiff’s reputation amongst the other cardiac surgeons so that they would agree to the conditions Rubens was imposing on the plaintiff’s remediation and further obstruct and defeat any effort by Aba-Alkhail to succeed. This was a further part of the conspiracy to injure Aba-Alkhail. The plaintiff only learned these facts after documents were released to him in 2011 under a Freedom of Information request.

346. By December of 2008, no agreement had been reached on the terms of the remediation contract as Rubens and the University continued to insist on such onerous terms that they constituted punishment, not remediation. The plaintiff was still banned from training. Finally Aba-Alkhail’s lawyer approached the defendant Bradwejn, Dean of the Faculty of Medicine, by letter to intervene in the matter. He received no reply.

347. On February 5, 2009, Bragg forwarded a revised draft of the remediation contract to Aba-Alkhail's lawyer which addressed some of the concerns set out in the lawyer's letter to Bradwejn.
348. On or about March 24, 2009, the remediation contract was finally signed by the plaintiff. Rubens told the plaintiff to "take it or leave it." This intransigence and the imposition of impossible conditions was done in furtherance of the conspiracy to remove the plaintiff from the Program.
349. Aba-Alkhail began his year of remediation on or about July 1, 2009, over two years after being wrongfully dismissed from the Program. He signed the standard contract dated June 18, 2009. His level of training was again PGY-1 in Cardiac Surgery. The conspiracy to injure the plaintiff by Bragg and Rubens was intended to cause and did cause damage to the plaintiff by this point in time in two years of lost training, extreme stress on himself and his family, anxiety, loss of reputation, humiliation financial loss and loss of self-esteem.
350. On or about July 1, 2009, the plaintiff's lawyer served the University, Rubens and Roy Masters, a surgeon in the Cardiac Surgery Program, with a Statement of Claim for damages for breach of contract, intentional interference with contractual and economic relations, negligence and infringement of Aba-Alkhail's human rights.
351. On September 16, 2009, Aba-Alkhail attended a mandatory lecture for the Royal College academic half day at the Cardiac Surgery Division as instructed by its office. Rubens was giving the lecture that day and in front of the other residents told the plaintiff to leave the room immediately. Rubens said, "I cannot teach while you are sitting in this room." The plaintiff left the room, extremely embarrassed and humiliated before his peers. This public act of intentional humiliation was part of the conspiracy to break the mind, will and resolve of Aba-Alkhail to comply and succeed.
352. In furtherance of the conspiracy, the plaintiff was thereafter banned from attending the Cardiac Surgery Core Program by Bragg, including rounds and educational events available to other PGY-1 residents in Cardiac Surgery. This ban included all educational

events whether or not Rubens was teaching. This deprived him of the benefits of academic days, all of which were mandatory by the Royal College requirements, was inconsistent with normal practice and breached the contract with Aba-Alkhail and government imposed accreditation standards. Bragg and Rubens knew what they were doing to the plaintiff was “tricky” because the mandatory lectures were appropriate for him and Bragg had already banned him from cardiac core program events. (The plaintiff learned this from documents disclosed to him in April 2011 through Freedom of Information from the University.) This was intended by Bragg and Rubens to defeat the object of remediation was to give the Aba-Alkhail the best chance for improvement and success.

353. On November 5, 2009, PAIRO, the resident’s association, submitted a grievance to the defendant Worthington at the Ottawa Hospital on behalf of Aba-Alkhail regarding the plaintiff’s ejection from the lecture by the defendant Rubens. PAIRO took the position that Aba-Alkhail was entitled to attend the lecture by virtue of the Faculty Council’s decision reinstating him to the Cardiac Surgery program and by the terms of his remediation contract. PAIRO repeatedly attempted to have meetings regarding this grievance but received an intransigent rejection and direction to proceed to arbitration. This was the decision of defendant Worthington as part of the conspiracy to frustrate the remediation.

354. Aba-Alkhail passed all rotations in the remediation year (July 1, 2009 to June 30, 2010), all of which were outside Cardiac Surgery, with evaluations ranging from “meets expectations” to “above expectations.” This demonstrated by contrast the calculated malice permeating the areas of control of the defendants Bragg and Rubens in the Cardiac Surgery Program, who conspired to discredit Aba-Alkhail in order to justify his removal at some future point.

355. Aba-Alkhail was ill the day he took the LMCC exam in the spring of 2010 and was urged by examiners not to take the exam, but feeling extreme pressure to do so because of the remediation contract requirements imposed by Rubens and the University, he attempted the exam and failed.

356. In March of 2010, Aba-Alkhail obtained the highest score of all residents at the Postgraduate year 1 and 2 (PGY1 & PGY2) level on the University's Fundamentals of Surgery Practice Exam even though he was still classified as a PGY1.
357. On April 23, 2010, the plaintiff's lawsuit against Rubens and the University was struck out as disclosing no reasonable cause of action. He appealed the decision to the Ontario Court of Appeal.
358. In the middle of June 2010, Aba-Alkhail was contacted by the Saudi attaché who told him that he had been approached by the CEO of the Royal College to ask Aba-Alkhail to come to a meeting. The plaintiff agreed to go to the meeting so long as his lawyer was with him.
359. On June 30, 2010, the last day of Aba-Alkhail's remediation year, he and his lawyer attended at the offices of the Royal College in Ottawa where the meeting was to be held. At the door, Senator Keon told the plaintiff that his lawyer could not come into the meeting and would have to wait in a separate room.
360. Aba-Alkhail went alone into the room where Bragg, Worthington, Rubens, Mesana, Senator Keon (founder of the Heart Institute), the Saudi Arabian attaché and the President of the Royal College Dr. Padmos, were sitting. Aba-Alkhail was told by Senator Keon that he represented the University and the Ottawa Heart Institute and stated that the plaintiff was to withdraw the lawsuit against the University and Rubens or he would be suspended and/or dismissed immediately. Senator Keon warned the University would never pay a penny to Aba-Alkhail and would appeal the case for years. The plaintiff was threatened that if he didn't drop all of the legal actions, he would not be a cardiac surgeon even in 10 years, that there would be a serious problem between the University of Ottawa and the plaintiff, a serious problem between the Royal College and the plaintiff and a serious problem between the Canadian government and the Saudi government. Senator Keon claimed to speak for the defendants Bragg, Rubens, Mesana, Worthington and the University and acted in furtherance of the conspiracy to destroy or injure Aba-Alkhail.

361. When Aba-Alkhail asked for clarification of some details of the meeting several days later, Bragg communicated with Bradwejn, Rubens and Worthington before responding. Bragg told the plaintiff he had until 4:00 pm on July 15, 2010 to say whether he was going to drop the action against both Rubens and the University as well as the PAIRO grievance against Rubens. Bragg refused to give an extension of time to the plaintiff, which the plaintiff had requested in order to get advice from PAIRO.
362. At 1:32 pm on July 15, 2010, Aba-Alkhail communicated to Bragg that “I feel have no choice in the circumstances. I feel very vulnerable and this is one of the reasons why I started the lawsuit in the first place. I felt it was the only guarantee of fairness I have.” Aba-Alkhail instructed his lawyer to drop the lawsuit. A Notice of Discontinuance was filed thereafter. He could not drop the PAIRO grievance because the grievance belonged to PAIRO, not to the plaintiff.
363. The CEO of PAIRO, Dr. Robert Conn, was contacted by the plaintiff but he refused to drop the grievance which is still outstanding. Conn expressed surprise and concern to Bragg that it had not been invited to the June 30th meeting since it had been attempting for months to get a meeting to discuss the grievance to no avail.
364. For the full year of the remediation, Rubens never met with Aba-Alkhail except for the meeting on June 30, 2010 in which the plaintiff was told to drop the lawsuit or be suspended/dismissed. He never discussed Aba-Alkhail’s progress over the year or his future educational path notwithstanding his position as Program Director. He scheduled the plaintiff’s rotations without consultation or discussion. These actions of withholding direction, instruction or consultation was in furtherance of the conspiracy to injure by destroying the potential for success on remediation and to injure Aba-Alkhail and his career.
365. On August 31, 2010, Rubens and the Cardiac Surgery Residency Education Committee met to discuss the outcome of Aba-Alkhail’s remediation. The defendant Rubens maliciously introduced the dropped lawsuit and the grievance to prejudice the committee with information irrelevant to their assessment and beyond their jurisdiction. These actions were reflected in the committee minutes. Aba-Alkhail was not invited to give

submissions to the Committee notwithstanding a request by his lawyer. Rubens had no discussions with the plaintiff prior to the meetings to review his accomplishments during remediation. These actions were contrary to natural justice and the Evaluation Policy. These prejudicial actions of Rubens were in furtherance of the conspiracy to defame, discredit, injure and destroy the career of Aba-Alkhail.

366. Aba-Alkhail was failed on his remediation by the Committee because of his failure of the irrelevant LMCC exam. He was offered an extension of remediation until he could write the LMCC exam in the fall of 2010. The plaintiff attended the exam but, under severe stress from the pressure put on him by the University and Rubens and unable to concentrate or study, failed it for the second time. This qualifying exam is unnecessary for foreign students who plan to return to their home country, as Aba-Alkhail did and of which the University had notice from the beginning of his residency.

367. From July 2010 to January 2011, in furtherance of the conspiracy, Rubens continued his practice of contacting the supervisors of the plaintiff's rotations, and providing them with inaccurate or incomplete and defamatory prejudicial information. Rubens wrote one of the supervisors to tell him that the plaintiff was on an extension of remediation because he failed the LMCC exam, in violation of confidentiality. Rubens continued to maliciously attempt to sabotage any success the plaintiff might have on rotations outside of Cardiac Surgery. The defendant Duchesne was told about Aba-Alkhail's failure of the LMCC exam and published this confidential information in an email to various people.

368. During 2010, Rubens did not allow the plaintiff to take any rotations in Cardiac Surgery denying him the opportunity to improve skills and remediate alleged weaknesses. Instead, like the plaintiff Alsaigh, Aba-Alkhail was sent back repeatedly during his residency to rotations in General Surgery until he had done more than the Royal College required. In June of 2010, Rubens instructed his assistant to tell Aba-Alkhail if he called asking to do rotations in Cardiac Surgery that he should talk to the defendant Worthington, not to him. Worthington worked for the Ottawa Hospital and had nothing to do with determining rotations for residents, including the plaintiff. Rubens was willing to help facilitate Aba-Alkhail being transferred out of Ottawa to another accredited facility to do his cardiac

surgery training blocks. Rubens' actions caused the plaintiff to lose all benefit of his contract with the University and was beyond his authority and contrary to his duties as the plaintiff's Program Director. The plaintiff learned this in 2011 when documents were released to him under a Freedom of Information request to the University.

369. In the fall of 2010, Rubens allowed the plaintiff to attend the academic days again. He wrote in an email disclosed to the plaintiff in 2011 under a Freedom of Information request:

"He can attend the wednesday morning academic days as he wishes as he's dropped the lawsuit (I really couldn't care about the grievance)".

370. In July 2010, in furtherance of the conspiracy, Rubens forward fed negative directions in the assessment of Aba-Alkhail to Dr. Jean-Denis Yelle. Dr. Yelle told the plaintiff that if he were to follow what Rubens said, he would have failed him.

371. In September 2010, the forward feeding of negative directions by Rubens also occurred with Aba-Alkhail's rotation with Dr. Richard Mimeault to such an extent that Mimeault finally informed Rubens that the plaintiff would be evaluated "based on our assessment."

372. From August 2010 to January 2011, in furtherance of the conspiracy to injure the plaintiff, the defendant Rubens confidentially solicited negative statements about the plaintiff from two rotation supervisors 11 months in one case and 5 months in the other, after the completion of the rotations. These supervisors had given evaluations of the plaintiff in their ITERS (In-training evaluation reports) which had not included such negative statements. In August 2010, Rubens also used assessments from a resident he knew to be hostile to the plaintiff. Rubens used these statements against the plaintiff during various appeals, contrary to the Evaluation Policy which required evaluations to be made during a rotation or soon thereafter. These deliberate accumulations of prejudicial, irrelevant statements were gathered by Rubens as part of the conspiracy to injure Aba-Alkhail.

373. In furtherance of the conspiracy, Bragg failed to respond to Aba-Alkhail's appeal filed on or about October 4, 2010 about Rubens' unfair treatment, in violation of the Appeal Mechanism and the plaintiff's rights to procedural fairness and due process.

374. Aba-Alkhail returned to the Cardiology division in October of 2010, for the first time since 2007, taking a Cardiology rotation. The defendant Rubens specifically asked the defendant Duchesne to be the plaintiff's supervisor and instructed Duchesne to find ways to fail Aba-Alkhail.

375. Prior to the commencement of the rotation, Duchesne, with information from Rubens and acting as agent of Rubens and as part of the conspiracy to injure, emailed to a number of recipients at the Heart Institute that Aba-Alkhail "did not perform well in a recent rotation" and required "remedial supervision." Aba-Alkhail was forced to correct this email by distributing his rotation evaluations (called "ITERS") to the same recipient list to show that in fact he had done well in his rotations.

376. On October 15, 2010, the defendant Duchesne replied to the plaintiff's email, with copies to some 15 other persons, some unknown to the plaintiff, with yet another defamatory email, saying, *inter alia*, that Aba-Alkhail had not passed the LMCC exam, a breach of confidentiality meant to injure and prejudice the plaintiff prior to the start of the rotation.

377. Duchesne, specifically in October 2010 to January 2011, was approached at least once before the commencement of the plaintiff's rotation by Rubens who asked Duchesne to fail Aba-Alkhail. Duchesne told Rubens he would so and that he would treat Aba-Alkhail like a medical student rather than as a resident, meaning there would be no direction requiring performance, and therefore without providing him adequate training. The lack of direction was a deliberate scheme to prevent the plaintiff from meeting performance standards which were never specific until the final assessment which would fail him.

378. On Jan 18, 2011, on the last day and last hour of Aba-Alkhail's rotation, Duchesne demanded that Aba-Alkhail write an exam always given to medical students, not medical residents. The plaintiff was the only resident who was required to write the exam. Duchesne told Aba-Alkhail that Rubens had demanded that the plaintiff write the exam.

Duchesne told Aba-Alkhail if he did not write it that he would fail the rotation. Prior to this, Duchesne had told Aba-Alkhail that he had passed the rotation.

379. Duchesne lied to Aba-Alkhail, saying that he passed the rotation, and that he would use the input from senior residents and from the cardiologist he worked with. Contrary to what he said, the defendant Duchesne failed Aba-Alkhail on his rotation even though he obtained excellent assessments from the senior residents, the staff and two cardiologists and even though he obtained a good mark on the exam written in the final hour of the rotation. In doing this, Duchesne was acting in concert with defendant Rubens in furtherance of the conspiracy to injure Aba-Alkhail.

380. Diane Davidson, VP Governance of the University, ignored two appeals sent on November 12, 2010 and December 8, 2010 concerning breach of student privacy in compliance with the Freedom of Information and Protection of Privacy Act, R.S. 1990, c. F 31. This was in furtherance of the conspiracy to defame, discredit and spread the word of the plaintiff's failure of the irrelevant and unnecessary exam (LMCC), and to undermine his confidence and reputation before others.

381. The disclosure of an unrepresentative selection of Aba-Alkhail's academic evaluations on or about December 2010 to his financial sponsor, the Saudi Arabian Cultural Bureau, was vindictive and designed to prejudice him with his sponsor. The University did not consult with Aba-Alkhail prior to disclosing these records which did not reflect the work that he did over 17 months of residency. These records were selected and disclosed by the University through the defendant Bragg's office as part of the conspiracy to discredit Aba-Alkhail, to cut off his funding and to cause him to be removed to Saudi Arabia. This was done in conspiracy among the defendants with intent and malice.

382. On or about December 22, 2010, Rubens informed the plaintiff that the Residency Program Committee had recommended that he had not passed his remediation period since he had failed to provide evidence that he passed his second sitting of the LMCC exam and, further, that he also had failed to successfully complete the remediation because of "consistent difficulties" about competence and professionalism that warranted probation. This was contrary to the In-training Evaluation Report (ITER) at that time.

Months after the rotations, however, as part of the conspiracy, the rotation supervisors were pressured by Rubens to add new assessments with negative comments about the plaintiff.

383. The plaintiff appealed the failure of his remediation and submitted to the PGEC Appeal Subcommittee emails disclosed to him under Freedom of Information which showed the duplicity and bad faith of Bragg and Rubens, and further bias by a Dr. Karpinski. Rubens protested the admission of these emails, alleging that the plaintiff had not obtained them through Freedom of Information. On July 4, 2011 the Appeal Subcommittee held that he had failed his remediation on the grounds of his failure of the LMCC Part I. It found, however, that he had passed all of his rotations and there were no grounds for failing his remediation other than the LMCC failure. It expressed concern and surprise that the Cardiac Division had insisted on payment of a mentor for Aba-Alkhail which he had been unable to do. The Subcommittee left consideration of the disputed emails to the full Committee to consider.

384. In furtherance of the conspiracy, the defendant Bragg did not convene a meeting of the full Committee to consider the recommendations of the Subcommittee and to deal with the email evidence, as required by its Bylaws and accreditation standards. Instead, Bragg sent the appeal materials out by email. The Committee vote, by email, was to uphold the failure of the remediation. Bragg refused to disclose documents relating to this vote to the plaintiff and refused the request of the plaintiff's lawyer for a reconvening of the Committee in an actual meeting, as required by its Bylaws and accreditation standards. The plaintiff has appealed this decision.

385. By the forgoing means, defendant Bragg deliberately and with malice sitting in conflict of interest on the PGEC in furtherance of the conspiracy refused to allow consideration of evidence prejudicial to the defendants Bragg and Rubens, which demonstrated their bias, animosity to and intent to injure the plaintiff.

386. Dr. Karpinski participated in the email vote to uphold the failure of the plaintiff's remediation even though she was mentioned in the email evidence submitted by the

plaintiff and even though she had been previously disqualified from sitting on the Appeal Subcommittee to consider the matter, a fact known by the defendant Bragg.

Conspiracy to injure

387. The defendants Bragg and Rubens are liable for damages for conspiracy to injure the plaintiff as particularized above. The plaintiff has suffered damages as a direct result of the conspiracy which he continues to suffer, including loss of reputation, severe stress, humiliation, discrimination, loss of dignity, loss of time, loss of income, loss of opportunity and livelihood and such other damages as will be shown by the evidence at trial.

388. The facts establishing the conspiracy and the malice and motive of the defendants only came to the knowledge of the plaintiff in 2011 when he obtained documents under a Freedom of Information request to the University that showed that the defendants' actions in concert to injure him.

Intimidation

389. The defendants Rubens, Mesana, Bragg, Worthington and Dean Bradwejn and each of them are liable for damages to the plaintiff for intentionally using threats against him at the meeting on June 30, 2010, particularized above, to use unlawful means, namely, suspending and/or dismissing the plaintiff for no just cause under his contract with the University, so as to compel him to obey their demand that he withdraw the civil lawsuit against the University, Rubens and Masters, and the plaintiff so threatened complied with the demand rather than risk the threat being carried into execution. The plaintiff suffered damages thereby by losing his right to proceed with the civil lawsuit and suffered mental distress including anxiety, fear and feelings of isolation and humiliation.

Misfeasance in Public Office

390. The defendants Dean Bradwejn, Bragg, Mesana and Rubens and each of them are liable for damages to the plaintiff Aba-Alkhail for exercising their powers as public officers for an improper purpose, intentionally in a manner that exceeded their authority, and/or

recklessly disregarding whether they had such power and knowing that their actions would injure the plaintiff, and /or were done recklessly or with willful blindness to the possibility of such injury, as follows:

- (a) The defendant Rubens decided within weeks of the start of Aba-Alkhail's residency in July of 2006 that he should be removed from the Program, and thereafter failed to act in accordance with his duty and authority as Program Director but rather in accord with his own desire to get rid of Aba-Alkhail;
- (b) The defendant Rubens failed Aba-Alkhail on his first rotation when Rubens had failed to adhere to the requirements of due process and the requirements of the Evaluation Policy;
- (c) The defendant Rubens used his influence and public office to place Aba-Alkhail immediately on probation after two rotation failures instead of allowing him a period of remediation, contrary to the Evaluation Policy;
- (d) The defendant Rubens took on the position of probation supervisor, then neglected to perform his duties as supervisor as required by the probation contract;
- (e) On December 19, 2006 the defendant Rubens unilaterally and without notice or hearing and secretly and without authority terminated Aba-Alkhail using Form 4026A;
- (f) Aba-Alkhail was informed of his dismissal on January 8, 2007 by Rubens one week before the end of the probation contract on January 15, 2007 and even before any written evaluations had been completed, contrary to the Evaluation Policy and procedures;
- (g) Aba-Alkhail was dismissed by the Cardiac Surgery Division which had no jurisdiction under the "Standards of Accreditation" and "Evaluation Policy" to do so. The dismissal was therefore made without authority to the knowledge of Mesana (who was Chair of the Division), Bragg and Rubens;

- (h) The defendants Bragg and Rubens met with the Saudi attaché in January of 2007 prior to the end of Aba-Akhail's probation, urging him to cut Saudi financial support for Aba-Alkhail and send him back to Saudi Arabia, without any authority to do so;
- (i) The defendant Bragg deliberately misled the Postgraduate Medical Education Committee (PGEC) in 2007 about the recommendation of the Appeal Subcommittee, adding the words "for the purpose of repeating probation" which was not its recommendation, and later altering or directing the alteration of the Minutes of the meeting in an attempt to hide Bragg's misrepresentation to the PGEC;
- (j) The defendants Bragg and Rubens refused to accept the decisions of the Appeals Subcommittee and the Faculty Council that the plaintiff had been wrongfully terminated from the Program and deserved to be reinstated and used the means particularized in the paragraphs above to obstruct and thwart the appeal decisions;
- (k) The defendant Rubens unlawfully embarked upon a vicious personal agenda of ending Aba-Alkhail's career using delay, refusal to provide assistance and support, assigning rotations without any consultation with Aba-Alkhail and refusing to meet with him for over a year, contrary to his duties and authority as Program Director;
- (l) The defendants Dean Bradwejn, Bragg, Mesana and Rubens used their power and influence over the plaintiff as public officers at the meeting with the plaintiff on June 30, 2010 to intentionally threaten and coerce the plaintiff into withdrawing his lawsuit against the University and the defendant Rubens as well as his grievance with PAIRO, knowing that such was beyond their authority and unlawful or reckless as to whether they had such authority, to injure the plaintiff by denying him his right to access the justice system or with willful blindness to the possibility of such injury;
- (m) The defendant Rubens humiliated and embarrassed the plaintiff in front of other residents on an academic day, telling him to leave the room; then Bragg and Rubens refused to allow the plaintiff to attend the Cardiac Surgery academic days and other educational events for months, denying him the benefits of his contract with the

University and contravening the Evaluation Policy and the “General Standards of Accreditation”;

- (n) The defendant Rubens forwarded negative views of Aba-Alkhail to his rotation supervisors at the start of his rotations outside Cardiac Surgery and pressured them to fail him, injuring the plaintiff’s reputation and ability to succeed in the Program;
- (o) The defendant Rubens deceived the plaintiff into believing that the writing of the LMCC qualifying examination would be required of all medical residents when he knew that the Program had no authority to make the LMCC such a requirement for all residents;
- (p) The defendants Rubens and Bragg required that the plaintiff pass the LMCC qualifying examinations in order to pass his remediation and return to full status, a requirement which was outside the jurisdiction of the Program and unlawful and which injured the plaintiff by placing him into a position of severe stress with no support or assistance; the plaintiff’s failure of the LMCC caused the failure of his remediation and jeopardized his residency;
- (q) Rubens refused to allow the plaintiff back into Cardiac Surgery rotations from 2006 onward. He wanted Aba-Alkhail to be transferred out of Ottawa to another accredited facility to do his cardiac surgery training blocks. Rubens’ actions caused the plaintiff to lose all benefit of his contract with the University and was beyond his authority and contrary to his duties as the plaintiff’s Program Director;
- (r) The defendant Rubens instructed the defendant Duchesne to fail Aba-Alkhail in the Cardiology rotation, in direct violation of his authority and duties as a public officer as Program Director and in violation of the Evaluation Policy and “General Standards of Accreditation;”
- (s) Rubens attempted to get the plaintiff’s supervisors to give the plaintiff negative ITERs; later he again solicited the supervisors for negative statements about the plaintiff months after they had already passed the plaintiff on his rotations. Rubens used the negative statements on appeals in an effort to injure the plaintiff by

- convincing appeal committees to fail him on his remediation in 2010 and the beginning of 2011;
- (t) The defendants Dean Bradwejn, Mesana, Bragg and Rubens used the extensive powers of their public offices over medical residents in a malicious, biased, prejudicial manner against the plaintiff, contrary to their duties to evaluate the plaintiff in a “transparent, objective, impartial and fair” manner and to act in good faith pursuant to ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* and the Evaluation Policy;
 - (u) The defendants Dean Bradwejn, Mesana, Bragg and Rubens perpetrated and allowed the creation of a poisoned work environment permeated with discrimination against Arabic nationals, including Aba-Alkhail, such that he did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
 - (v) The defendants Bragg and Rubens intentionally exercised their powers as public officers over the plaintiff’s training and evaluation in a manner that did not assist him to succeed but rather for the improper and malicious motive of ensuring he would not succeed as a medical resident, thereby injuring him;
 - (w) The defendant Rubens used his public office to convince other members of the Cardiac Surgery Division that the plaintiff was incompetent and should be failed on his remediation in 2010, apart from the LMCC, forcing the plaintiff into another appeal which found he did in fact pass all rotations in his remediation year successfully;
 - (x) Such further and other acts of misfeasance as public officers as may be established by the evidence at trial.

391. The Plaintiff suffered damages from the defendants’ misfeasance including loss of time, self-esteem, anxiety, depression, loss of educational opportunity, loss of income, and humiliation with his sponsor, the Saudi government. He was maliciously denied any

benefits from his internal appeals at the University because of the defendants' misfeasance and denied the benefit of any remedies he may have obtained from the civil lawsuit.

Breach of Fiduciary Duty

392. The defendants Dean Bradwejn, Mesana, Bragg, and Rubens are liable in damages to the plaintiff Aba-Alkhail for breach of their fiduciary duty to him in respect of the same conduct particularized in paragraphs 390 for which he has suffered irreparable damage as particularized herein.

393. As Program Director, Rubens had a particular fiduciary duty pursuant to the standard contract signed with Aba-Alkhail to act as a fiduciary which he breached. The plaintiff suffered damages as a result of this breach, including severe ongoing stress, depression, humiliation, loss of training, loss of self-esteem and other damages as particularized below.

Negligence and Breach of Contract

394. The plaintiff Aba-Alkhail pleads in the alternative, that the defendants Dean Bradwejn, Bragg, Mesana and Rubens owed a duty of care to the plaintiff to carry out their respective obligations with the skill, judgment, competence and diligence reasonably to be expected of ordinarily competent academic professionals and administrators in a Faculty of Medicine. The defendants and each of them breached their duty of care to the plaintiff and performed their services negligently, and in breach of contract, the particulars of which include but are not limited to the following:

- (a) The defendant Rubens breached his duty of care to the plaintiff by deciding within weeks of the start of Aba-Alkhail's residency in July of 2006 that he should be removed from the Program, and thereafter failed to act in accordance with his duty as Program Director but rather in accord with his own desire to get rid of Aba-Alkhail;

- (b) The defendant Rubens failed Aba-Alkhail on his first rotation when Rubens had recklessly and negligently failed to adhere to the requirements of due process and the requirements of the Evaluation Policy;
- (c) The defendant Rubens breached his duty of care to Aba-Alkhail by placing him immediately on probation instead of allowing him a period of remediation to give him an opportunity to succeed;
- (d) The defendant Rubens took on the position of probation supervisor, then recklessly and negligently failed to perform his duties as supervisor as required by the probation contract;
- (e) The defendants Mesana and Rubens breached their duty to Aba-Alkhail by participating and assisting in the dismissal of the plaintiff by the Cardiac Surgery Division when they knew or ought to have known that the Division had no authority under the Evaluation Policy and the “General Standards of Accreditation” to do so;
- (f) The defendants Mesana, Bragg and Rubens breached their duty to Aba-Alkhail by failing to ensure the dismissal of the plaintiff was carried out properly, fairly and in accordance with the Evaluation Policy and “General Standards of Accreditation”;
- (g) The defendants Bragg and Rubens breached their duty to the plaintiff by meeting with the Saudi attaché in January of 2007 prior to the end of Aba-Akhail’s probation, urging him to cut Saudi financial support for Aba-Alkhail and send him back to Saudi Arabia, without any authority to do so;
- (h) The defendant Bragg negligently informed the PGEC in 2007 that the recommendation of the Appeal Subcommittee included the words “for the purpose of repeating probation” which was not its recommendation, and later altered or directed the alteration of the Minutes of the meeting in an attempt to hide this;
- (i) The defendants Bragg and Rubens recklessly and in breach of their duty to the plaintiff refused to accept the decisions of the Appeals Subcommittee and the Faculty Council that the plaintiff had been wrongfully terminated from the Program and

deserved to be reinstated and used the means particularized in the paragraphs above to obstruct and thwart the appeal decisions;

- (j) The defendant Rubens recklessly and in breach of his duty to the plaintiff embarked upon a vicious personal agenda of ending Aba-Alkhail's career using delay, refusal to provide assistance and support, assigning rotations without any consultation with Aba-Alkhail and refusing to meet with him for over a year, thus denying the plaintiff the assistance, supervision and support usually provided by a Program Director;
- (k) The defendants Dean Bradwejn, Bragg, Mesana and Rubens recklessly attended the meeting with the plaintiff on June 30, 2010 to threaten and coerce the plaintiff into withdrawing his lawsuit against the University and the defendant Rubens as well as his grievance with PAIRO when they knew or ought to have known that such would result in injury to the plaintiff and a denial of his rights;
- (l) The defendant Rubens breached his duty of care to the plaintiff by humiliating and embarrassing the plaintiff in front of other residents on an academic day and telling him to leave the room, then refusing to allow the plaintiff to attend the Cardiac Surgery academic days for months, denying him the training he had contracted for;
- (m) The defendant Rubens breached his duty of care to the plaintiff by forward feeding negative views of Aba-Alkhail to his rotation supervisors at the start of his rotations outside Cardiac Surgery and pressuring them to fail him, when he knew or ought to have known that his actions were injuring the plaintiff;
- (n) The defendants Rubens and Bragg breached their duty of care to the plaintiff by requiring him to pass the LMCC qualifying exams in order to pass his remediation and return to full status, a requirement which was outside the jurisdiction of the Program and unlawful to their knowledge and which they knew or ought to have known would injure the plaintiff by placing him into a position of severe stress with no support or assistance;
- (o) The defendant Rubens breached his duty of care to the plaintiff by instructing the defendant Duchesne to fail Aba-Alkhail in the Cardiology rotation, in direct violation

of his duties as a public officer as Program Director and in violation of the Evaluation Policy and “General Standards of Accreditation;”

- (p) The defendants Dean Bradwejn, Mesana, Bragg and Rubens breached their duty of care to the plaintiff by abusing the extensive powers of their public offices over medical residents in a malicious, biased, prejudicial manner against the plaintiff, contrary to their duties to evaluate the plaintiff in a “transparent, objective, impartial and fair” manner and to act in good faith pursuant to ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code* and the Evaluation Policy;
- (q) The defendants Bragg and Rubens negligently perpetrated and allowed the creation of a poisoned work environment permeated with discrimination against Arabic nationals, including Aba-Alkhail, such that he did not receive the benefit of ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*, contrary to s. 15 of the *Canadian Charter of Rights and Freedoms*;
- (r) The defendants Bragg and Rubens breached their duty to the plaintiff to ensure that the residents, including the plaintiff, were not subject to intimidation, abuse, or harassment in accordance with the “General Standards of Accreditation” and the University’s “Standards of Ethical and Professional Behaviour;”
- (s) The defendants Bragg and Rubens breached their duty of care to the plaintiff by using their power over the plaintiff’s training and evaluation in a manner that did not assist him to succeed but rather for ensuring he would not succeed as a medical resident, thereby injuring him;
- (t) The defendant Rubens breached his duty of care to the plaintiff by requiring him to write the LMCC qualifying examinations as part of his remediation contract when he knew he had no authority to do so and failed him on his remediation when he did not pass the examination;
- (u) The defendant Rubens negligently and in breach of his duty convinced other members of the Cardiac Surgery Division that the plaintiff was incompetent and should be failed on his remediation in 2010, apart from the LMCC, forcing the plaintiff into

another appeal which found he did in fact pass all rotations in his remediation year successfully;

(v) Such further and other breaches of duty and contract as may be proven at trial.

395. The plaintiff says that the conduct of the defendants and each of them was in wanton and reckless disregard for the plaintiff's rights, as a registered medical resident in the Cardiac Surgery Program, to be taught the specific objectives of Cardiac Surgery in a manner free from intimidation, discrimination and abuse and his rights to be evaluated fairly, based on his actual work in an environment where he was afforded equal opportunity as that of other residents.

396. The damages suffered by the plaintiff, as particularized below, were a direct and foreseeable consequence of the failure on the part of the defendants to carry out their duties to the plaintiff.

Defamation

397. On or about October 12, 2010, the defendant Duchesne falsely and maliciously published of and concerning the plaintiff Aba-Alkhail, personally and in the way of his profession and calling, the following defamatory words:

“Unfortunately Khalid did not perform well on a recent rotation and requires remedial supervision. The division of cardiac surgery has requested that he remain with me for as long as possible.”[...] “Rick – could you please document any deficiencies or things that he has done well during that week. We will need it in writing.”

398. The said defamatory words were published by way of email to a list of persons at the Heart Institute and other persons unknown.

399. Aba-Alkhail complains of and intends to rely on the entirety of the email published by the defendant in which these defamatory words appear.

400. Aba-Alkhail states that the defamatory words, in their natural and ordinary meaning, and by innuendo, meant and were understood to mean, inter alia, the following, that he is:

(a) A deficient resident who has not performed well on a recent rotation

(b) A deficient resident who requires remedial supervision

(c) That his deficiencies are so serious the division of cardiac surgery has requested that he remain with Duchesne as long as possible

401. The defamatory words published by Duchesene, and the innuendo arising from them, are false and were maliciously published by the defendant knowing that they were false or with careless disregard as to whether they were true or not.

402. As a result of the publication of the defamatory words, the plaintiff has been subjected to hatred and contempt and has suffered damages to his reputation personally and in the way of his profession and calling.

403. As a result of the defamatory words, and all repetitions and republication of them, the plaintiff has been injured in his feelings, in his personal and professional character and reputation, and in his profession and calling. The plaintiff has also suffered personal embarrassment and humiliation.

404. The plaintiff was forced to reply to the email containing the defamatory words and disclose his previous confidential evaluations to show that he was performing well in previous rotations.

405. As a result of all of the foregoing, the plaintiff has suffered and will continue to suffer damages for which the defendant Duchesne is liable.

406. The malicious, high-handed, callous and arrogant conduct of Duchesne as aforesaid displays a wanton and flagrant disregard for the plaintiff's rights. Such conduct warrants an award of punitive, aggravated and exemplary damages to ensure that Duchesene is appropriately punished for his conduct and that he is deterred from such conduct in the future.

Liability of University of Ottawa for negligence and breach of contract

407. The plaintiffs and each of them plead that the defendant University owed them a duty of care. The plaintiffs plead that there is a sufficiently close relationship between the plaintiffs and the University that in the reasonable contemplation of the University carelessness on its part was likely to cause damage to the plaintiffs. The facts which support the duty of care are:

- (a) the plaintiffs were registered as students at the University and were appointed as trainees with the Faculty of Medicine, Postgraduate Medical Education;
- (b) the University was obligated to provide postgraduate medical education to the plaintiffs in accordance with the "General Standards of Accreditation" of the Royal College;
- (c) the University was under a duty to evaluate the plaintiffs in accordance with ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*;
- (d) the individual defendants are employees and/or officers of the University;
- (e) the University was aware of the complaint of racial/ethnic discrimination in the Neurosurgery Program by several residents of Arabic origin, including the plaintiff AlGhaithy, in March of 2009;
- (f) the University was aware of the Grievance of the plaintiff Alsaigh filed in April 2009 about ongoing intimidation, harassment, racial discrimination and bias in the Cardiac Surgery Program;
- (g) the University was aware of the civil action by the plaintiff Aba-Alkhail in 2010 for damages against it for infringement of his human rights, breach of contract and negligence;
- (h) the University was aware and sanctioned the meeting on June 30, 2010 in which the plaintiff Aba-Alkhail was threatened and intimidated into dropping the said civil action against the University by its highest officers;

- (i) the University was aware of the Human Rights Complaints filed by the plaintiffs with the Human Rights Tribunal of Ontario in 2010 alleging racial discrimination against the University and various of the defendants;
- (j) the University was aware that in February of 2011, emails leaked by the anonymous source, "Neuroleaks," showed a culture of contempt for residents' rights to be free from discrimination and revealed an unlawful conspiracy by its officers/employees to dismiss the plaintiff AlGhaithy because he had laid a complaint of racial discrimination against a Faculty of Medicine member;
- (k) the University was aware of the systemic racist attitudes against residents of Arabic origin by its officers and employees.

408. The plaintiffs plead that the University breached the terms of its contracts with the plaintiffs and each of them and breached the duty of care owed to the plaintiffs and each of them, as follows, including but not limited to:

- (a) failed to ensure that the evaluations of the plaintiffs were carried out in compliance with ss. 22.2 and 22.4(2) of the *Health Professions Procedural Code*;
- (b) failed to ensure that the evaluations of the plaintiff were carried out in good faith in compliance with the Evaluation Policy and the Royal College "General Standards of Accreditation";
- (c) failed to ensure fair treatment of the plaintiffs contrary to the Evaluation Policy, including ensuring that the plaintiffs were accorded procedural fairness and natural justice;
- (d) failed to ensure a proper educational environment free of intimidation, harassment and abuse with mechanisms in place to deal with such issues as they arose, contrary to the "General Standards of Accreditation" of the Royal College, the Evaluation Policy and the Faculty of Medicine's "Standards of Ethical and Professional Behaviour;"
- (e) failed to adequately supervise or control the actions of the individual defendants;

- (f) failed to take steps to investigate and remedy the systemic racial discrimination permeating the Postgraduate Medical Education at the Faculty of Medicine against Arabic residents;
- (g) failed to ensure that the appeal process was not thwarted and obstructed by the negligence and /or malicious actions of the individual defendants, contrary to the “Appeal Mechanism”;
- (h) failed to ensure that pleas by the plaintiffs over the years for interventions by higher University officers to assist them in dealing with misconduct by faculty members were investigated and answered;
- (i) failed to ensure the confidentiality of the private records of the plaintiffs;
- (j) failed to ensure that the proper disclosure of documents during the appeal processes and compliance with the Royal College “General Standards of Accreditation” regarding appeal procedures and administrative jurisdiction;
- (k) failed to ensure that the role of in-house counsel within the appeal process did not taint the proceedings with reasonable apprehension of bias;
- (l) failed to ensure that the individual defendants complied with the University’s “Standards of Ethical and Professional Behaviour;”
- (m) failed to have in place procedures to deal with allegations of professional misconduct that provided due process and the safeguards of natural justice including impartiality and transparency;
- (n) failing to ensure that the individual defendants did not use untrue and defamatory statements against the individual plaintiffs within the faculty meetings and discussions in a manner which was intended to and did injure the said plaintiffs;
- (o) allowing, condoning, and fostering through its servants and agents, its faculty, authorities, administration, and staff an atmosphere and work environment which when foreign out-funded students were necessary to support a program encouraged foreign students such as the plaintiffs to apply for admission but when domestic

funding was available to support a program, subjected the plaintiffs and other foreign students to defamation, abuse, excessive monitoring, discriminatory requirements, and conspiracy to injure, which the University through the named defendants perpetrated on the plaintiffs to discredit, humiliate, injure and dismiss them and each of them as previously described here.

409. The damages suffered by the plaintiffs, as pleaded in this Claim, were a direct and foreseeable consequence of the failure on the part of the University to carry out its duties to the plaintiffs and to honour its contracts with the plaintiffs and each of them.

Vicarious Liability

410. As the employer of the individual defendants, the defendant University of Ottawa permitted or acquiesced the individual defendants to act in the manner that they did and, as such, is vicariously liable for their actions, which were within the scope of their duties and negligently or maliciously performed.

Breach of Equality Rights under s. 15(1) of the *Canadian Charter of Rights and Freedoms*

411. The plaintiffs claim damages against the University for violation of their rights under the *Canadian Charter of Rights and Freedoms*, section 15(1), which provides:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

412. The plaintiffs plead, as particularized in the circumstances and facts pleaded above, that the University is subject to the *Canadian Charter of Rights and Freedoms* as agent for the Ontario government in implementing a specific government program, namely, the education, training and qualification of postgraduate medical residents in medical specialties, under s. 32(1)(b) thereof.

413. The plaintiffs have been subjected to ongoing and systemic discrimination based on racial and national or ethnic origin because of their Arabic origin, as particularized in this

Claim, for which the University is liable. This conduct shows the plaintiffs were discriminated against including but not limited to:

- (a) As Arabic medical residents they were subjected to unwarranted criticism and disparagement of their work.
- (b) As Arabic medical residents, they were subjected to harsh and unreasonable performance standards not generally applied;
- (c) As Arabic medical residents, they were subjected to harassment in the performance of their duties by the defendant staff;
- (d) Abuse of authority by the individual defendants by subjecting Arabic medical residents to humiliation and embarrassment.
- (e) Imposition of harsher discipline than accorded residents of Canadian origin for the same or comparable alleged misconduct.
- (f) Subjecting Arabic medical residents to pressure and coercion to abandon their residency.

414. Damages are just and appropriate as the plaintiffs have suffered loss of reputation, loss of livelihood, loss of professional opportunity, anxiety, humiliation, and loss of time and financial investment in their medical residencies.

Complaints under the Human Rights Code

415. The plaintiffs filed complaints in 2010 under the *Human Rights Code*, R.S.O. 1990, CHAPTER H.19 with the Human Rights Tribunal of Ontario which seek financial compensation for discrimination and other remedies different from that available from this Court in that they do not involve breach of contract, negligence, intimidation, defamation, misfeasance in public office and conspiracy to injure as alleged in this Statement of Claim.

Damages

416. The foregoing allegations of all three plaintiffs are not isolated incidents to be viewed separately but are part of an overall corporate culture, scheme or plan within the University of Ottawa's Faculty of Medicine, Postgraduate Medical Education of

oppression, bullying, misfeasance in public office, conspiracy to injure, denial of natural justice, defamation, negligence, breach of contract, attacks on reputation and personal dignity, false allegations, and intimidation which was part of the discriminatory process against medical residents of Saudi national origin and/or Arabic descent and which destroyed the careers of all three plaintiffs.

417. As a result of the actions of the defendants, the plaintiffs and each of them have suffered the damages as plead herein, which include, but are not limited to:

- (a) Loss of income;
- (b) Loss of reputation;
- (c) Mental distress and suffering, including depression and anxiety;
- (d) Loss of future employment as surgeons;
- (e) Loss of time and opportunity to pursue other medical specialties.

Punitive Damages

418. The defendants have treated the plaintiffs in a high-handed and oppressive manner. The conduct of the University and the individual defendants described herein constitute such wanton and reckless disregard of their professional duties, their contractual obligations as well as their *Charter* obligations and has caused such devastating harm that an award of punitive and aggravated damages is warranted.

419. The plaintiffs ask that the trial for this action take place in Toronto.




Dated this 24th day of November, 2011.

Douglas H. Christie
810 Courtney St.
Victoria, B.C. V8W 1C4
Telephone 250-590-2979
Fax 250-479-3294
Law Society of B.C. #3301

Barbara Kulaszka,
Box 1635, 41 Kingsley Ave.,
Brighton, ON K0K 1H0
Tel: 613-475-3150
Fax: 613-475-0648
LSUC #19953U

Lawyers for the Plaintiffs

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Toronto, Ontario

Statement of Claim

Douglas H. Christie
810 Courtney St.
Victoria, B.C. V8W 1C4
Tel: 250-590-2979 Fax 250-479-3294
Law Society of B.C. #3301

Barbara Kulaszka,
41 Kingsley Ave., P.O. Box 1635,
Brighton, ON K0K 1H0
Tel: 613-475-3150 Fax: 613-475-0648
LSUC #19953U

Counsel for the Applicant